
Inspections and Searches in the Environmental Context

2nd Edition

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Environment
Ontario

Jim Bradley, Minister

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**Environment
Ontario**

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CONTENTS

PREFACE	iv
INTRODUCTION	1
THE ORDINARY INSPECTION	1
PURPOSE OF INSPECTIONS	2
WHY WARRANTS AREN'T REQUIRED FOR ADMINISTRATIVE INSPECTIONS	11
FORCIBLE INSPECTIONS UNDER JUDICIAL AUTHORITY	12
EMERGENCY POWERS	15
ADMINISTRATIVE ENTRIES UNDER EPA PART IX (SPILLS)	16
SEARCHES INTENDED ONLY TO OBTAIN EVIDENCE FOR THE PURPOSE OF PROSECUTION – SEARCH WARRANTS	17
DETENTION OF THINGS SEIZED	19
WARRANTLESS SEARCHES	20
WARRANTLESS SEIZURES	20
PROTECTION OF CONFIDENTIAL INFORMATION SUCH AS TRADE SECRETS	21
POSSIBLE CONSEQUENCES OF FAILING TO CO-OPERATE WITH A PROVINCIAL OFFICER ACTING IN THE COURSE OF DUTY	22
REMEDIES FOR UNREASONABLE SEARCH AND SEIZURE	22
APPENDIX 1	
■ Inspections performed by the Ministry of the Environment, 1986 ..	25
APPENDIX 2	
■ Excerpts from the Canadian Charter of Rights and Freedoms with thumbnail commentary	29
APPENDIX 3	
■ <i>Environmental Protection Act</i>	35
□ Sections 1-2	35
□ Section 83	37
□ Sections 126-130	38
□ Section 134b	45

APPENDIX 4	
■ <i>Freedom of Information and Protection of Privacy Act</i>	47
□ Sections 11, 14, 17, 28	
APPENDIX 5	
■ <i>Ontario Water Resources Act</i>	52
□ Sections 4(3)-(4), 10-10i	
APPENDIX 6	
■ <i>Pesticides Act</i>	58
□ Sections 17, 19-19g	
APPENDIX 7	
■ <i>Provincial Offences Act</i>	63
□ Sections 132, 142-145	
APPENDIX 8	
■ <i>Provincial Courts Act</i>	67
□ Forms 140-142, 147	
APPENDIX 9	
■ <i>Fisheries Act</i>	71
□ Sections 35, 35.1	
APPENDIX 10	
■ <i>Pest Control Products Act</i>	73
□ Sections 7-9	
APPENDIX 11	
■ <i>Canadian Environmental Protection Act</i>	76
□ Section 76	
APPENDIX 12	
■ <i>Transportation of Dangerous Goods Act</i>	78
□ Section 14	

This handbook was produced to assist provincial officers regarding your rights, limitations and obligations when entering private property. It is meant to be a quick reference guide to the law as it was in the summer of 1988.

If you have any questions, please contact the Legal Services Branch. We will be happy to assist you.

Dianne Saxe
Counsel

INTRODUCTION

- Environmental protection has become a fundamental social value in Canada and around the world.
- "One of the most pressing issues confronting modern industrial man is his concern over the natural environment. Contaminants of one sort or another enter the air and water and are deposited on the land. Our lakes and forests are dying. Our scientists warn us that we must exercise better management over the only planet in our universe on which life, as we know it, exists, or civilization itself will be threatened."
R. v. Lopes, Lampkin, Prov. Ct. J.
- "The world has come a long way from the mid-seventies, when environmental concerns were considered something only the rich could afford to worry about. Today, they are concerns no one can afford to ignore."
Worldwatch Institute, *State of the World*, 1988
- The successful application of our environmental laws depends upon effective inspections and enforcement.
- **It is essential to distinguish between inspections and searches.** An investigation seeking evidence of a known past offence for the purpose of prosecution is not an inspection, but a search. Special, very technical rules apply to searches. Searches can be conducted only on consent or when authorized by a search warrant under the *Provincial Offences Act*.
Hunter et al. v. Southam, (1984) (2 S.C.R. 145, 11 4th 141)

THE ORDINARY INSPECTION

■ Statutory authority

Ontario:

Environmental Protection Act (EPA), as amended in 1988, s. 126 to 129
Ontario Water Resources Act (OWRA), as amended in 1988, s. 10 to 10i
Pesticides Act (PA), as amended in 1988, s. 19 to 19g

Related federal powers, which can be used only by specifically designated officers:

Fisheries Act, s. 35, 35.1
Pest Control Products Act, s.7, 8, 9
Atomic Energy Control Regulations, s. 12 (d)
Transportation of Dangerous Goods Act, s. 14
Canadian Environmental Protection Act, s. 76

■ Who can inspect

- ☐ Provincial officers appointed by the Minister to carry out duties

under a particular statute.

EPA s. 4; *OWRA* s. 4; *PA* s. 17

- Provincial officers are peace officers for the purposes of the statutes which they are appointed to enforce, but are not police officers.

R. v. Renz, (1972) 10 C.C.C. (2d) 250 (Ont. C.A.)

- When acting in the course of their duties, provincial officers are protected by the *Criminal Code* s. 118 (assault peace officer) and 119 (personate peace officer).
 - Some provincial officers are so designated only for a particular part of one statute.
- ☐ Provincial officers can bring reasonable assistance, e.g. a police officer, if they consider it necessary.
- EPA* s. 126 (1), 128; *OWRA* s. 10 (1); *PA* s. 19 (1)

PURPOSE OF INSPECTIONS

■ Inspections must be reasonably related to the administration of the Act or regulations, e.g.

- ☐ to perform baseline studies
- ☐ to locate and identify pollution
- ☐ to check the quality or quantity of water
- ☐ to check for compliance with:
 - statutes
 - regulations
 - certificates of approval
 - orders
 - licences
 - etc.
- ☐ to identify, contain, clean up, and prevent future repetitions of incidents such as emissions or spills
- ☐ to examine opportunities to reduce pollution
- ☐ to discuss and attempt to resolve neighbourhood complaints about pollution, pesticides, or water
- ☐ to determine whether proposed construction or alterations should be approved, or
- ☐ to ensure that pollution control equipment has been constructed as applied for and approved.

■ What can be inspected

- ☐ Anything open to the general public; an officer has the same right of entry as any other member of the public, but then enjoys no special powers.
- ☐ Any part of the natural environment, to ascertain how it has been affected by contaminants and what to do about it.

EPA, s. 126(1)a; *OWRA*, s. 10(1)a

- There is a lower expectation of privacy in open places other than those in the immediate vicinity of a dwelling.

U.S. v. Dunn, 55 L.W. 4251 (1987; U.S.)

- ☐ Any place the officer reasonably believes to contain waste or a pesticide.

EPA s. 126(1)b; *PA* s. 19(1)a

- ☐ Any place to ascertain the quality or quantity of water, and what to do about it.

OWRA s. 10(1)b

- ☐ Any place the officer reasonably believes is discharging, has discharged or may discharge a contaminant or pesticide.

EPA s. 126(1)c; *OWRA* s. 10(1)c; *PA* s. 19(1)b

Re Yorkville North Development Ltd and City of North York, (1986) 57 O.R. (2d) 172

R. v. Bertram Miller Ltd., 28 C.C.C. (3d) 263 (Fed. C.A.)

- ☐ Any place the officer reasonably believes to contain documents related to
 - an activity or business which holds or ought to hold an approval (including licences, permits etc.) or is subject to an order, or
 - the discharge of contaminants or pesticides.

EPA s. 126(1)d; *OWRA* s. 10(1)d; *PA* s. 19(1)c

Belgoma Transportation Ltd. and Director of Employment Standards, (1985) 20 D.L.R. (4th) 156; 51 O.R. (2d) 509 (Ont. C.A.)

- ☐ Any place the officer reasonably believes is an activity or business which holds or ought to hold an approval (including licences, permits etc.) or is subject to an order.

EPA s. 126(1)e; *OWRA* s. 10(1)e; *PA* s. 19(1)d

Regina v. Quesnel, (1985) 53 O.R. (2d) 338; 24 C.C.C. (3d) 78 (Ont. C.A.) leave to appeal refused (S.C.C.)

Ozubko, v. Manitoba Horse Racing Commission, (1986) 33 D.L.R. (4th) 714 (Man. C.A.)

Note: It is now deemed a condition of all approvals that provincial officers must be admitted forthwith on request. Failure to do so may be grounds to suspend or revoke the approval.

EPA s. 127g; *OWRA* s. 10i; *PA* s. 19g

- ☐ Any place stocking or selling motor vehicles, for inspections relating to auto emissions.

EPA s. 126(1)h

- ☐ Any place stocking or selling soft drinks, for inspections relating to beverage containers.
EPA s. 126(1)h
- ☐ Any place stocking or selling pesticides.
PA s. 19(1)f
- ☐ Ice shelters.
EPA s. 126(1)i
- ☐ Abandoned motor vehicles.
EPA s. 126(1)j
- ☐ Any place the officer believes to contain vehicle plates which s/he has a duty to seize (please first contact Legal Services Branch).
EPA s. 126(1)l
- ☐ Any place, in order to carry out orders or directions of the Minister under EPA Part IX (Spills).
EPA s. 126(1)m
- ☐ Indian lands are not exempt from inspection, and may be entered for the same reasons as any other property.
R. v. Francis, (1988) S.C.J. No. 43
- ☐ Federal Crown lands owned and occupied by the federal government are probably not within provincial jurisdiction, except possibly as to minor incidental matters which in no way interfere with their operations (such as how they throw out their garbage). However, ordinary contractors who are simply performing work for the federal government remain under provincial jurisdiction, even on Crown land.
Montcalm Construction Inc. v. Minimum Wage Commission, (1978) 93 D.L.R. (3d) 641 (S.C.C.)

■ Vehicles and vessels

- ☐ Vehicles and vessels may be stopped and inspected at random to determine whether they comply with the Act and regulations, eg. if a boat's head discharges to an approved holding tank or a car has a working converter.
EPA, s. 126(1)g; OWRA s. 10(1)f
R. v. Hufsky, April 28, 1988, S.C.C.
- ☐ In other cases, vehicles and vessels should not be stopped under the *EPA* or *OWRA* unless the officer has reasonable grounds to believe that:
 - it is being operated contrary to the Act or regulations
 - it is discharging, has discharged or is likely to discharge a contaminant

- ▼ it is or is required to be mentioned in or authorized by an approval, licence or permit (this includes all vehicles used for waste disposal), or
 - it is being used in the commission of an offence under the Act.
- EPA s. 126(1) f; OWRA s. 10(1)f*

R. v. Meredith, (unreported endorsement) Ont. C.A., June 17, 1985

South Dakota v. Oppenheim, (1976) 428 U.S. 364

- ☐ Under the *PA*, vehicles and vessels may be stopped and inspected if the officer reasonably believes that
 - it is or is required to be mentioned in or subject to a permit, licence or order
 - it contains a pesticide, or
 - it is being or may be used in performing an extermination.
- PA s. 19(1) e*

■ When to inspect

- ☐ Any reasonable time.
- ☐ Normally during usual business hours.
- ☐ Inspections can be late at night for businesses which normally operate at that time.
- ☐ Extensive inspections or audits, usually called 'surveys', may last for several weeks.

■ Inspecting dwellings

- ☐ "Dwelling" refers to room(s) actually used by someone as a home (it does not include uninhabited buildings).
- ☐ Dwellings cannot be entered except on consent or under the authority of a warrant or judicial order.
- ☐ The officer must be especially scrupulous to produce his/her designation before entry.
- ☐ Barring an environmental emergency, the occupant can request the officer to return at a more convenient time.

EPA s. 126(5); OWRA s. 10(3d); PA s. 19(5)

Regina v. Bichel, (1986) 4 B.C.L.R. (2d) 132 (B.C.C.A.)

■ How to get in

- ☐ Provincial officers must, on request, identify themselves (preferably by producing a certificate of designation) and explain the purpose of the inspection. It is always wise to do this even if not specifically so requested.
- EPA s. 126(3); OWRA s. 10(3b); PA s. 19(3)*
- ☐ Every inspection must have a purpose which is reasonably related

to the administration of the Act under which it is made.

- ☐ On request, the officer must explain the purpose of the inspection.
- ☐ Officers may take reasonable steps when necessary to the exercise of their statutory powers, such as climbing over or under a fence. However, they are not entitled to use force and may therefore not break in.
- ☐ An officer who stops a vehicle or vessel must be clearly identifiable by the driver as a Ministry of the Environment officer, e.g. by posting signs, conspicuously parking a marked ministry car, wearing distinctive clothing, etc.

■ What can the officer do during the inspection

- ☐ The officer's activities must be reasonably related to the purpose of the inspection.
- ☐ The officer may observe and inquire about anything which may affect the discharge of contaminants from the premises, such as:
 - direct emissions
 - leaks
 - storage facilities
 - waste handling facilities
 - production processes which generate wastes or emissions
 - precautions for dealing with upsets, spills and adverse weather
 - employee training.
- ☐ The officer may also observe and inquire about procedures for compliance with regulatory requirements, e.g. waste manifests.
- ☐ The officer may record information by making notes, photos, audio or videotapes, etc.
EPA s. 126(1)q; OWRA s. 10(1)k; PA s. 19(1)j
- ☐ The officer may take samples.
EPA s. 126(1)p; OWRA s. 10(1)j; PA s. 19(1)h
- ☐ The officer can require that anything be operated, used, or set in motion.
EPA s. 126(1)o; OWRA s. 10(1)h; PA s. 19(1)g

■ Questioning individuals

- ☐ The officer may make reasonable inquiries of any person, orally or in writing.
- ☐ Except where time is of the essence, everyone who so wishes should be given a reasonable opportunity to consult his/her counsel before providing information to a provincial officer.
- ☐ Provincial officers must be careful not to detain people. If an individual may reasonably believe that a provincial officer has put some legal restraint on his or her freedom of movement, the officer should advise the individual of their right to counsel

under s. 10 of the Canadian Charter of Rights and Freedoms.

- ☐ The officer may exclude from the questioning anyone other than the counsel of the individual being questioned.

EPA s. 126(4); *OWRA* s. 10(3c); *PA* s. 19(4)

- ☐ If the employer's counsel proposes to double as counsel for individual employees, the officer should try to ensure that the employee knows that:
 - corporate counsel regularly represents the corporation and intends to continue to do so
 - any information which corporate counsel learns while representing the individual may not be kept confidential from the employer
 - there may be a conflict of interest between the corporate client and the individual, for example, should it appear that the employee failed to comply with any company rules
 - should a conflict occur, corporate counsel may be unable to continue to represent the individual
 - the employee is not obliged to accept corporate counsel, and may obtain union counsel, other counsel of his/her choice, or choose to act without counsel
 - it is an offence to dismiss, discipline, penalize, coerce or intimidate any employee because the employee has refused to pollute or has given or may give information to the Ministry or a provincial officer
- EPA* s. 134b
- the employee should be entitled to know whether the company will pay for the services of independent counsel (many do).
 - ☐ The final decision as to whether or not a particular counsel attends an interview as counsel for an employee is up to the employee.

■ Self-incrimination:

- ☐ The privilege against self-incrimination gives a person charged with an offence the right not to be compelled to be a witness for the prosecution at his or her trial. It does not apply to persons who may later be charged with an offence, whether or not an investigation is already underway

Thomson Newspapers Ltd v. Director of Investigation, (1986) 30 C.C.C. (3d) 145 (Ont. C.A.)

R. v. Esposito, (1985) 53 O.R. (2d) 356 (Ont. C.A.)

- ☐ Only a person charged with an offence can claim the privilege. A corporation or other employer cannot prevent its employees (including directing minds) from being compelled to give evidence against it.

Re Corning Glass Works of Canada Ltd., (1971) 2 O.R. 3 (C.A.),
leave to appeal to S.C.C. refused (1971) 2 O.R. 11n

Re Arrigo and the Queen, (1986) 29 C.C.C. (3d) 77 (Ont. H.C.)

- ☐ The right to remain silent does not preclude appropriate police (or investigator's) questions. Provincial officers have the right and duty to ask appropriate questions; provided constitutional rights such as the right to counsel) have not been infringed, and the answers are voluntary, the answers will be admissible in a prosecution.

R. v. Hicks, (1988) 4 W.C.B. 331 (Ont. C.A.)

- ☐ Every one responsible for a source of contaminant is required to furnish such information as a provincial officer requires for the purposes of the Act and regulations. It is not yet clear whether these sections will withstand a Charter attack. We therefore recommend that they not be used to force individuals to give answers that would incriminate themselves, except where necessary to deal with an ongoing environmental emergency.

EPA s. 127(3), 129

R. v. Vandervoet, (1986) 15 W.C.B. 491

- ☐ If the officer has reasonable and probable grounds to believe that a particular individual has committed an offence, any statement given by that individual will be subject to the usual 'confessions rule': i.e. the statement will only be admissible in court against that person if it was made voluntarily. Generally, this requires the giving of a caution and the absence of promises or threats.

Ibrahim v. the Queen, (1914) A.C. 599

- ☐ Answers which have been obtained through coercive and threatening means are not admissible at common law. In addition, obtaining answers by such means is a breach of section 7 of the Canadian Charter of Rights and Freedoms.

R. v. Woolley, Ont. C.A., April 5, 1988

- ☐ Statutory compulsion does not take away the 'voluntary' character of a statement

Walker v. the King, (1939) S.C.R. 123, 214

- ☐ Provincial officers must be careful not to detain people. If an individual may reasonably believe that a provincial officer has put some legal restraint on his or her freedom of movement, the officer should advise the individual of their right to counsel under s. 10 of the Canadian Charter of Rights and Freedoms.
- ☐ The criteria for determining whether someone is detained are:
 - whether the interview took place in a coercive environment, such as a police station
 - whether the person had a choice as to the location of the interview

- whether the person was escorted to the site of the interview or came on their own
- whether the person was free to leave at the conclusion of the interview
- whether the questioning was part of the general investigation of an offence or whether the investigator had already decided that the person questioned was the offender and was attempting to obtain incriminating admissions
- whether there were reasonable and probable grounds to believe the person questioned had committed the offence
- the general nature of the questions: whether they were to obtain information or were accusatory
- the subjective belief by the defendant that s/he was detained and was not free to go.

R. v. Moran, (1987) 36 C.C.C. (3d) 225 (Ont. C.A.)

■ Books and Records

- ☐ A provincial officer may require the production of books and records which the person inspected is required by the Act or regulations to keep, and any other document relevant to the inspection, such as:

- waste manifests, records of pesticide sales, etc.
- waste disposal records
- operations and emission logs
- work orders
- plans and drawings
- books of account
- related correspondence and files
- company policies on environmental protection
- training materials

Belgoma Transportation Ltd. and Director of Employment Standards, (1985) 20 D.L.R. (4th) 156; 51 O.R. (2d) 509 (Ont. C.A.)

Charbonneau et al. v. College of Physicians and Surgeons, (1985) 52 O.R. (2d) 552

Re Cole and F.W. Woolworth Co. Ltd. et al., (1985) 22 D.L.R. (4th) 609 (Sask Q.B.)

Re Eagle Disposal and Min. of Env., 9 C.C.C. (3d) 500, aff (1984) 13 C.C.C. (3d) 351 (Ont. C.A.)

Re Gershman Produce Co. Ltd. and Motor Transport Board, (1985) 22 D.L.R. (4th) 520 (Man.C.A.)

Thomson Newspapers Ltd et al. v. Director of Investigation & Research et al., (1986) 57 O.R. (2d) 257 (C.A.)

EPA s. 126(1)r; *OWRA* s. 10(1)l; *PA* s. 19(1)j

- ☐ Courts prefer the officer to allow the person inspected a reasonable time to produce any necessary documents, including (if requested) an opportunity to contest the order to produce.

R. v. McKinley Transport, (1987) 1 W.C.B. (2d) 115

- What is reasonable will vary with the size of the company, the number of documents, etc.
- ☐ If you have reason to fear that the documents may be destroyed during the delay, you may try for an agreement to have them sealed during the interim. It is also possible to leave one officer to watch the documents while another seeks an immediate search warrant.
- ☐ The officer can make extracts or copies of any relevant document. Frequently, the officer will request the person inspected to initial the copies, verifying their accuracy and completeness. If documents are removed from the premises to be copied, the officer must give a receipt and return the documents promptly.

EPA s. 126(1)s; *OWRA* s. 10(1)m; *PA* s. 19(1)k

- ☐ The officer may occasionally make minor excavations, e.g. to examine septic tanks. If this is done, the officer must restore the property as far as reasonably possible.

EPA s. 126(1)n, 127f; *OWRA* s. 10(1)h, 10h

■ What can the officer take away

- ☐ Reasonable samples.
EPA s. 126(1)p; *OWRA* s. 10(1)j; *PA* s. 19(1)h
- ☐ Copies of any relevant documents (originals only with consent or, after giving a receipt, where necessary to be copied).
EPA s. 126(1)q, 126(1)s, 127a; *OWRA* s. 10(1)k, 10(1)m, 10c; *PA* s. 19(1)i, 19(1)k, 19b
- ☐ Abandoned property, such as garbage put out for municipal pickup, dumped waste or effluent outfalls, may be seized without a warrant, where the seizure does not require an unauthorized search of private property.

■ Inspection of vehicles' mechanical condition

- ☐ MOE operates a special test centre in Downsview to check the tailpipe emissions of motor vehicles. Cars which appear to police to have excessive emissions will be given a ticket requiring them to come to the Centre within the next few weeks. If excess emissions are found, they will be given another few weeks to bring the vehicle into compliance.

WHY WARRANTS AREN'T REQUIRED FOR ADMINISTRATIVE INSPECTIONS

- Warrantless inspections are not unreasonable in an administrative context.
- Regulated businesses cannot reasonably expect privacy from inspection by regulatory agencies.

Re Belgoma Transportation and Dir. of Employment Standards, (1985) 20 D.L.R. (4th) 156; 51 O.R. (2d) 509 (Ont. C.A.)

R. v. Bertram S. Miller Ltd., (1986) 1 C.E.L.R.(N.S.) 16 (F.C.A.), leave to appeal to S.C.C. denied

R. v. Bichel, (1986) 29 C.C.C. (2d) 438 (B.C.C.A.)

R. v. Charbonneau, 52 O.R. (2d) 552

Frank v. Maryland, 359 U.S. 360

Re Gershman Produce Co. Ltd. and Motor Transport Board, (1986) 1 W.W.R. 303 (Man. C.A.)

R. v. Hufsky, April 28, 1988, S.C.C.

Ozubko v. Manitoba Horse Racing Commission, (1986) 33 D.L.R. (4th) 714 (Man. C.A.)

R. v. Quesnel, (1985) 53 O.R. (2d) 338 (C.A.)

R. v. Rao, (1984) 46 O.R. (2d) 80, 90 D.L.R. (4th) 542, 12 C.C.C. (3d) 97 (Ont. C.A.)

- ☐ Application for a licence, certificate of approval, etc. is evidence of tacit consent to the reasonable enforcement of the terms of the licence, etc. including compliance with the relevant statute and regulations.

Ozubko v. Manitoba Horse Racing Commission

Tallman v. Dept. of Natural Resources, 365 N.W. (2d) 724 (Mich. 1984)

- ☐ The administrative context is essentially distinct from the criminal context for which warrants are designed.
 - The purpose of inspections is to avoid or remedy risks to the public welfare generally caused by ignorance, negligence or cost-cutting.
 - The purpose is primarily preventative and protective, not punitive.

Malarctic Hygrade Gold Mines (Canada) Ltd. & Ontario Securities Comm., (1986) 54 O.R. (2d) 544 (Div. Ct.)
 - Warrant systems, requiring proof of a pre-existing offence, are not well designed to deal with future problems, which is the principal goal of a regulatory system.

- It is undesirable to delay inspections until after problems have been demonstrated (remember the Titanic).
- Routine inspections, including spot checks, are the necessary and proper means of ensuring compliance with a regulatory scheme.

Ozubko v. Manitoba Horse Racing Commission

R. v. Bichel

- Regulatory inspections are so numerous that imposing a warrant requirement would cause enormous expense and delay without significantly enhancing individual rights.
- When problems such as spills occur, response must be immediate.
- Warrantless inspections have a good historical record, with almost no known abuses.

Ontario Law Reform Commission report, *Rights of Entry*

- The economic and political power of the regulated industry limits potential for abuse.

■ An inspection is not a search

- ☐ The intrusiveness of inspections is limited.
- ☐ Inspections involve no rummaging through personal possessions.
- ☐ Inspections are performed without the use of force.

Provincial Offences Act s. 130

- ☐ Inspectors are unarmed and generally not uniformed.
- ☐ No inherently suspect group is targeted.

R. v. Sydholm, (1983) 22 M.V.R. 37 (B.C.C.A.)

- ☐ No stigma is involved in administrative inspection.
- ☐ If officers overstep proper boundaries, they may be asked to leave.
- ☐ Where a search is necessary, it must not be camouflaged as an inspection.

FORCIBLE INSPECTIONS UNDER JUDICIAL AUTHORITY

■ Statutory authority

Environmental Protection Act (EPA), s. 127

Ontario Water Resources Act (OWRA), s. 10b

Pesticides Act (PA), s. 19a

■ When to seek an order authorizing a forcible inspection

- ☐ An officer needs to be able to use force when, for example:
 - he/she needs to inspect a place that is locked but no one is there to grant entry
 - someone has prevented the officer from carrying out his/her duties, or there is reasonable ground to believe that he or she will do so
 - the place to be inspected is very remote, timely entry is important and an order cannot be obtained later in a timely fashion if access is denied
 - there is reasonable ground to believe that an attempt to enter without the order might defeat the purpose of the entry (eg. because documents would be destroyed) or endanger people, property or the environment.

EPA s. 127(1); OWRA s. 10b; PA s. 19a(1);
- ☐ Examples include:
 - entries necessary to obtain documents required to determine the ownership of a contaminant for the purpose of an administrative order such as a control order
Re Eagle Disposal and Min. of Env., 9 C.C.C. (3d) 500, aff (1984) 13 C.C.C. (3d) 351 (Ont. C.A.)
 - entries necessary to fairly assess all possible waste disposal sites in a particular municipality, where some landowners have refused entry
 - businesses which have refused to permit a routine inspection.

■ The application for the order

- ☐ must be sworn
Provincial Offences Act s. 145
- ☐ must follow Form 142
Provincial Courts Act
- ☐ must attest, on reasonable and probable grounds, to facts which would justify the order sought. The grounds must be written with the same extreme care as when seeking a search warrant
Provincial Offences Act s. 145
- ☐ is generally made *ex parte*. However, in the occasional case where there is nothing to be gained by surprise, it is wise to give the other side notice.

■ Grounds for the order

- ☐ The actions to be authorized by the order must be necessary for the administration of the Act.
 - Enforcement of the Act and regulations is included in 'administration of the Act'; but where a warrant could be obtained, it must be used.

Re Eagle Disposal and Min. of Env., 9 C.C.C. (3d) 500, aff (1984) 13 C.C.C. (3d) 351 (Ont. C.A.)

- ☐ The grounds must be set out upon oath with the same care and degree of detail as the information for a search warrant.
- ☐ Generally, the order will be sought in a situation of ongoing or recurring pollution, to obtain evidence on which to base a control or cleanup order.
- ☐ It is not necessary to allege the commission of an offence.
- ☐ Confidential informants need not, and generally should not, be named.
- ☐ Courts can be expected to be vigilant to prevent use of this provision to evade warrant requirements.

■ Form of the order

- ☐ The order must follow form 147.
Provincial Courts Act
- ☐ The order must be reasonably specific about the what the officer is entitled to do.
- ☐ The order must name one or more specific officer(s).
 - Others may assist.
EPA s. 128(1), PA s. 18
- ☐ The order must specify an expiry date within 30 days.
- ☐ The order must be carried out between 6 a.m. and 9 p.m. unless otherwise specified.

■ Effect of the order

- ☐ The order can authorize the named officer to do anything s/he could do in an ordinary inspection, except to question individuals, but with the addition of the right to use reasonable force.
- ☐ The order can authorize numerous activities not possible under a search warrant, such as excavations for the purpose of inspection, dye tests, prolonged sampling, detention of a thing in place, etc.
- ☐ An officer can require a police officer to assist him/her in executing the order.

■ Inspection of the order

- ☐ The person inspected has the right to examine the order before granting the officer entry.
- ☐ The person inspected is not entitled to examine the supporting sworn statement at that time.
- ☐ The person inspected is not entitled to a copy of the order, but may be provided one as a courtesy.
- ☐ After execution of the order has been completed, the person inspected is entitled to a copy of the order and of the supporting

statement. These may be obtained from the court or from the MOE legal branch.

A.G. of Nova Scotia et al. v. MacIntyre, (1982) 65 C.C.C. (2d) 129 (S.C.C.)

- ☐ In exceptional cases, the Crown may apply to the court for an order protecting from disclosure some portions of the supporting statement (e.g. the name of a confidential informant). These portions should be prepared on a separate page. However, the entire statement may have to be disclosed at trial if necessary to permit the defendant to make full answer and defence.

■ Return

- ☐ If the officer takes anything from private property other than samples or copies, s/he must bring it before a judge or justice of the peace to obtain an order for its detention, just as if it had been seized under a search warrant.

EPA s. 127d; *OWRA* s. 10f; *PA* s. 19e

■ Review of the order

- ☐ The person inspected may apply to the High Court to quash the order.

Provincial Offences Act s. 124

- ☐ Review usually takes place after execution of the order, but can take place before.
- ☐ If the order is struck down, any evidence obtained under it may become unusable.

EMERGENCY POWERS

- If the officer finds a vehicle or vessel which is or is likely to discharge a contaminant likely to cause an adverse effect upon people, property or the environment if allowed to remain where it is or to move, s/he may give a written direction requiring the vehicle or vessel to stay where it is or to move to a specified place, as the case may be.

EPA s. 126a; *OWRA* s. 10a

- ☐ The direction will expire after two business days unless extended by court order.

EPA s. 127(1a); *OWRA* s. 10b(2)

- ☐ Officers cannot make control or stop orders requiring the person to cease pollution except under s. 20 of the *Pesticides Act*; these are the prerogative of the Minister or Director. However, failure to control avoidable emissions pointed out by the officer will adversely affect any future due diligence defence.

- Vehicle permits and vehicle plates may be seized without a warrant if the officer has reasonable and probable grounds to believe that the

vehicle was used or is being used to commit an offence relating to hauled liquid industrial waste or hazardous waste, and that continued operation of the vehicle is likely to result in an adverse effect upon the environment. This is an emergency power.

- ☐ The officer must be quite sure that the only way to protect the environment is to seize the plates.

EPA s. 47a

Milton v. Canada, (1987) 2 W.W.R. 662 (B.C.C.A.)

R. v. Bertram Miller Ltd., 28 C.C.C. (3d) 263 (Fed. C.A.)

ADMINISTRATIVE ENTRIES UNDER EPA PART IX (SPILLS)

- Only applies when a spill has occurred and in the course of responding to that spill. This is the only power of entry not restricted to provincial officers.

EPA s. 83

- ☐ Entry may be performed by anyone subject to a duty, order or direction under Part IX of the *EPA* (Spills), including:
 - ministry employees or agents subject to a direction (s. 82)
 - the owner of pollutant and person having control of it (s. 81)
 - the municipality or other person named in an order (s. 85)
- ☐ Such a person can enter any building, structure, vehicle, land, water or air of any person.
- ☐ Such a person can remove the pollutant or anything affected or that may reasonably be affected by the pollutant.
- ☐ The right of entry is enforceable by application without notice to a judge or local judge of the Supreme Court.

EPA s. 83(2)

- The specific powers under the *EPA* Part IX and s. 126 (1)m are in addition to, not instead of, the inspection powers of provincial officers.

- Return

- ☐ It is not necessary to bring the things removed before a justice of the peace.

SEARCHES INTENDED ONLY TO OBTAIN EVIDENCE FOR THE PURPOSE OF PROSECUTION – SEARCH WARRANTS

- Generally, search and seizure (as opposed to inspection) is permissible only under the authority of a warrant or with the consent of the person searched.

Hunter et al. v. Southam, (1984) 2 S.C.R. 145, 11 D.L.R. (4th) 141, 14 C.C.C. (3d) 97

- Statutory authority

Provincial Offences Act s. 142

Criminal Code s. 443, for federal offences, e.g. *Fisheries Act*

- Minimum requirements for a valid search warrant

- ☐ Warrants must be issued and signed by a justice of the peace or judge. If a subsequent court challenge is expected, it is wise to seek the warrant from the most senior and knowledgeable judge available.
- ☐ Warrants must be issued to a police officer or named person(s).
 - In environmental context, usually one or more provincial officers.
 - All provincial officers performing the search should be named; police officers may be named but this is not essential.
- ☐ Warrants must specify
 - the alleged offence
 - the place to be searched
 - the things to be searched for, and
 - its expiry date.
- ☐ Warrants must be based upon a signed and sworn information which sets out in as much detail as possible:
 - the offence believed to have been committed
 - reasonable grounds for that belief
 - that the things are believed to be either the subject of the offence or evidence of the offence
 - reasonable grounds for that belief
 - the place to be searched (need not belong to the offender). If a law office or any third party premises are to be searched, this must be set out clearly in the information. The judge will generally want to be satisfied that all other means of obtaining the evidence have been tried before permitting a search of a law office.

- that the things are in the place to be searched, and
- reasonable grounds for that belief.
- ☐ The sworn information must be complete. It cannot be supplemented by other information given orally to the justice.
- ☐ It is relatively easy to obtain a search warrant; it is much more difficult to obtain a warrant that will withstand subsequent attack in court.
- ☐ The standards of accuracy, completeness, fairness and persuasiveness now expected of informations for search warrants is very much higher than in the past. They cannot be prepared too carefully.
- ☐ If any material facts are omitted from the information, this may be grounds to later declare the warrant invalid and to require all of the evidence to be returned.

■ **Minimum requirements for a valid search:**

- ☐ It must comply with the warrant.
- ☐ It must be performed reasonably, without unnecessary intrusiveness or force.
 - Generally, if force is required, a provincial officer will call upon a police officer for assistance.
- ☐ Particularly at a dwelling, the officer should knock, identify himself/herself and explain the reason s/he is there.
- ☐ The warrant must be shown on request to the person searched.
Provincial Offences Act s. 132
- ☐ The search must be performed by the person(s) to whom the warrant is issued.
 - Unnamed police officers may assist.
- ☐ It must be performed between 6 a.m. and 9 p.m. standard time (7 a.m. to 10 p.m. Daylight Saving Time), unless the warrant specifies otherwise.
- ☐ Places which could not possibly contain the things to be searched for may not be searched.
- ☐ The search must end when the things described in the warrant have been found.
- ☐ A search warrant may be executed only once.
Wah Kie v. Cuddy, (1914) 23 C.C.C. 383 (Alt. C.A.)

■ **Inspection of the warrant**

- ☐ The person inspected is not entitled to a copy of the warrant prior to the search, but may be provided one as a courtesy.

- ☐ After execution of the warrant is completed, the person inspected is entitled to a copy of the warrant and of the supporting information. These may be obtained from the court or from the MOE.

A.G. of Nova Scotia et al. v. MacIntyre, (1982) 65 C.C.C. (2d) 129 (S.C.C.)

Re Chapman and the Queen, (1984) 46 O.R. (2d) 65 (Ont. C.A.)

- ☐ In exceptional cases, the Crown may apply to the court for an order protecting from disclosure some portions of the supporting information (e.g. the name of a confidential informant). These portions should be prepared on a separate page. However, the entire information may have to be disclosed at trial if necessary to permit the defendant to make full answer and defence.

■ The return

- ☐ All things seized under the warrant or during the search must be carried before a justice (the 'return') within a reasonable period, usually one to two weeks.

Provincial Offences Act s. 143

- ☐ If the things are too numerous or heavy to bring to the justice, it is permissible to bring the justice to the things.
- ☐ The return may be made without notice to the person from whom the evidence was seized.

R. v. Church of Scientology of Toronto

DETENTION OF THINGS SEIZED

- The justice shall order the detention of the things for a period of up to three months.

R. v. Church of Scientology of Toronto

- The detention period may be extended by laying charges to which the things relate, or by orders for extended detention. Such orders may be made for any reasonable period of time, upon an application without notice. The application should be made before the prior detention order expires.

Provincial Offences Act s. 143(2)

R. v. Church of Scientology of Toronto

■ Examination and release

- ☐ Any person with an interest in the thing may apply to a justice for an order releasing the thing where its detention is no longer necessary.

Provincial Offences Act s. 143(4)

- ☐ An order may also be sought to examine or test the thing.

Provincial Offences Act s. 143(3)

- Solicitor-client privilege may be claimed, where appropriate, in anything seized.

Provincial Offences Act s. 144

WARRANTLESS SEARCHES

- Warrantless searches must always be based upon reasonable and probable grounds to believe that a serious offence has occurred, i.e. an offence dealing with actual pollution or hazardous or hauled liquid industrial waste.

EPA s. 127c, *OWRA* s. 10e, *PA* s. 19d

- Warrantless searches must always be performed reasonably.

- If it is feasible to obtain a warrant, a warrant must be obtained.

Hunter et al. v. Southam, (1984) 2 S.C.R. 145, 11 D.L.R. (4th) 141, 14 C.C.C. (3d) 97

- Warrantless searches are permissible where it is not feasible to obtain a warrant ("exigent circumstances"). Examples include:

- ☐ where reasonable grounds exist to search a vehicle or vessel which is moving or likely to be moved

R. v. Meredith, (unreported endorsement Ont. C.A.) June 17, 1985

R. v. Debot, (1987) 30 C.C.C. (3d) 209 (Ont. C.A.)

- ☐ an immediate hazard to the environment or to human beings

Bertram Miller v. R., 28 C.C.C. (3d) 263 (Fed. C.A.)

Michigan v. Tyler, 436 U.S. 499 (1978)

- ☐ where evidence of an environmental incident, such as a spill or emission, is transient, allowing no time to obtain a warrant before the disappearance of the evidence.

R. v. Noble (1984), 16 C.C.C. (3d) 146 (Ont. C.A.)

- If resistance or a need to use force is anticipated, the assistance of a police officer should generally be sought. Provincial officers cannot lawfully execute a warrantless search by force.

WARRANTLESS SEIZURES

- During a proper inspection the officer may seize anything that the officer reasonably believes will afford evidence of the commission of an offence, and which is:

- ☐ a thing in plain view

EPA s. 127b; *OWRA* s. 10d; *PA* s. 19c

Re R. and Shea, (1982) 38 O.R. (2d) 582 (H.C.)

R. v. Longtin, (1983) 41 O.R. (2d) 545 (Ont. C.A.)

R. v. Russ, B.C. Co. Ct., Prince Rupert, McKinnon Co. Ct. J.
March 3, 1987

Chic Fashions (West Wales) Ltd. v. Jones, (1968) 2 Q.B. 299

Coolidge v. New Hampshire, 403 U.S. 443 (1971)

Steagald v. U.S., 451 U.S. 204 (1981)

Ozubko v. Manitoba Horse Racing Commission; or

- ☐ a thing produced to the officer in the course of the inspection.

EPA s. 127b; *OWRA* s. 10d; *PA* s. 19c

New Garden Restaurant and Tavern Ltd. et al. and Minister of National Revenue, (1983) 43 O.R. (2d) 417 (H.C.J.)

R. v. Dzagic, (1985) 19 C.C.C. (3d) 98 at 104, aff. other grounds
27 C.C.C. (3d) 1 (Ont. C.A.)

R. v. O'Flaherty, March 27, 1987, (Nfld. C.A.)

- ☐ Both receipts and reasons must be given.

EPA s. 127b(3); *OWRA* s. 10d(3); *PA* s. 19c(3)

- During a proper warrantless search, the officer may seize anything which he/she finds if the officer reasonably believes the thing will afford evidence of the commission of an offence. Receipts must be given.

EPA s. 127c(3); *OWRA* s. 10e(3); *PA* s. 19d(3)

- Warrantless seizures are viewed by many courts with great suspicion. They must be performed with demonstrable good faith and documented with meticulous precision. Whenever possible, it is better to obtain a warrant.

■ Return

- ☐ The thing must be carried before a justice for a detention hearing just as if it had been seized pursuant to a warrant.

EPA s. 127d; *OWRA* s. 10f; *PA* s. 19e

PROTECTION OF CONFIDENTIAL INFORMATION SUCH AS TRADE SECRETS

- Until 1990, everything learned by a provincial officer during an inspection under the *EPA* must be kept confidential, unless

- ☐ the information relates to the discharge of contaminants
- ☐ disclosure of the information is required for the administration of the Act, eg. for a trial, or
- ☐ the person to whom the information relates consents to its disclosure.

EPA s. 130

- After January 1, 1990, all information in the possession of ministry employees must be disclosed to the public on request. There is a limited number of exceptions, including

- ☐ information whose disclosure would interfere with law enforcement, and
- ☐ trade secrets and confidential scientific, technical, commercial, financial or labour relations information.

Freedom of Information and Protection of Privacy Act s. 14, 17

- Information that reveals a grave environmental, health or safety hazard to the public always be disclosed.

Freedom of Information and Protection of Privacy Act s. 11

- Where the person inspected claims that certain information is exempt from disclosure, the officer should keep it separate and clearly marked 'confidentiality requested.' The procedure for determining whether such information should be disclosed is set out in s. 28 of the *Freedom of Information and Protection of Privacy Act*.

POSSIBLE CONSEQUENCES OF FAILING TO CO-OPERATE WITH A PROVINCIAL OFFICER ACTING IN THE COURSE OF DUTY

- Damage to environment
- Loss of subsequent due diligence defence in any prosecution
- Civil liability for ensuing damages.
- Suspension or revocation of licenses, approvals, etc
- Obstruction charges

EPA s. 129, PA s. 17(5)

- Personal liability of directors and officers

EPA s. 147a

REMEDIES FOR UNREASONABLE SEARCH AND SEIZURE

- Complaint to the Minister, Deputy Minister, or Director
- Application to a justice for return of any thing seized, or release of anything detained
- Application to the Supreme Court to quash the search warrant
Provincial Offences Act, s. 124
- Application at trial for the exclusion of evidence in any subsequent prosecution

Canadian Charter of Rights and Freedoms s. 8, 24(2)

- N.B. Provincial officers and other ministry employees cannot be personally sued for damages for any act done in good faith in the execution or intended execution of any statutory duty or authority or for any alleged neglect or default in the execution in good faith of such duties.

Environmental Protection Act s. 140

Ontario Water Resources Act s. 53

Pesticides Act s. 16

APPENDIX 1

INSPECTIONS PERFORMED BY THE MINISTRY OF THE ENVIRONMENT

In 1986, designated provincial officers of the Ministry of the Environment entered private and municipally owned property approximately 50,000 times, at a total cost of \$6,500,000. In addition, a large number of entries were performed by plumbing inspectors employed by the Ministry of Health, and by municipal water quality inspectors.

The entries took place in the context of the Ministry's activities as a whole, which include annually:

- ☐ 18,000 pollution complaints
- ☐ 6,000 spill reports
- ☐ 5,000 applications for approvals
- ☐ 10,350 requests to review proposed developments; and
- ☐ 180 environmental assessments.

The vast majority of the entries were performed under the statutory powers granted by Sections 127 and 128 of the *Environmental Protection Act*; the remainder took place under the similar provisions of the *Ontario Water Resources Act*, the *Environmental Assessment Act*, or the *Pesticides Act*.

The Ministry's provincial officers are unarmed. They do not have the power to use force and do not do so. Only two of them, those who check auto emissions, wear uniforms. All entries occur during normal business hours, except in emergencies (e.g. spills). Ninety-eight per cent of the entries were inspections performed by abatement staff; less than two per cent were performed by the separate group of investigators.

■ Half of the entries (roughly 25,000) were to business premises already individually regulated by the Ministry. These were businesses which held MOE approvals such as:

- ☐ certificates of approval for pollution control equipment (air and water emissions)
- ☐ certificates of approval for waste management systems, including disposal sites
- ☐ permits or approvals to operate water or sewage works and systems
- ☐ permits to operate businesses such as well-drilling and exterminations
- ☐ permits for the use, sale and handling of pesticides; or which were the subject of
 - current applications for Environmental Assessment Act

approvals, or

- administrative orders issued by the ministry to control pollution.

- ☐ The number of such businesses is likely to increase with time, as from 4,000 to 6,000 approvals and permits are now issued by MOE annually. By 1988, there were 12,000 industrial facilities discharging to watercourses; 30,000 industrial facilities discharging to air, and 892 water and sewage treatment plants, to be monitored.
- ☐ These premises were entered
 - in response to complaints about pollution which might have come from the premises
 - on the request of the business, for example to assist them with pollution control or to assess applications for ministry funding or approvals
 - on a routine basis, to promote compliance
 - to follow up on problems previously identified
 - to assist local municipalities and other ministries in making land use decisions, such as zoning changes

■ Roughly 6,500 of the entries were to other commercial and industrial business premises. These included businesses governed by MOE regulations, such as generators of hazardous and liquid industrial waste; automotive garages, muffler shops and car dealerships (auto emissions); businesses selling regulated beverages (solid waste from beverage containers and recycling). It also included other businesses which caused pollution.

- ☐ These premises were entered
 - in response to complaints about pollution which might have come from the premises
 - on the request of the business, for example to assist them with pollution control or to assess applications for ministry funding or approvals
 - on a routine basis, to promote compliance
 - to follow up on problems previously identified
 - to assist local municipalities in making land use decisions, such as zoning changes.

■ Approximately 7,200 open areas were inspected, consisting primarily of proposed, existing and abandoned waste disposal sites. These sites were inspected

- ☐ to determine the suitability of proposed waste sites
- ☐ to assist local municipalities in making land use decisions, such as zoning changes
- ☐ to keep an eye on abandoned sites
- ☐ to explain the new rules governing waste disposal to waste

- management operators, and to encourage them to comply
- ☐ to identify and respond to problems created by improper waste management.
- Properties containing private dwellings were entered approximately 9,000 times by MOE personnel, and on additional occasions by public health and plumbing inspectors employed by local municipalities and health departments.
 - ☐ These premises were entered
 - to inspect individual sewage systems under construction and during operation, to ensure that they comply with approved permits and are not causing pollution (outdoors)
 - to assess the need for and safety of new or expanded sewage or water system in the vicinity (outdoors)
 - to identify sewage systems which are leaking and thereby contaminating nearby watercauses
 - to assess the nature and extent of generalized problems in the area with the quality of quantity of water (indoors)
 - to take samples of drinking water for analysis as to potability (indoors)
 - to perform spot checks on licenced well drillers during well construction
 - to perform inspections relating to contaminants emitted from the dwelling, e.g. smoke from wood stoves (usually in response to neighbourhood complaints)
 - on occasion, to request an opportunity to discuss with the homemaker an environmental problem unrelated to the home.
 - ☐ In no case was a dwelling entered without the permission of the occupier. In the majority of cases (almost all water and sewage matters), the entry was initiated at the request of the homeowner, a local residents' group, or the municipality.
- Approximately 2,200 vessels were inspected. These inspections were to determine whether the vessel's head (toilet) was equipped to prevent the discharge of excrement into the water.
- Approximately 2,100 vehicles were inspected. 1,750 of these were inspected by police officers who observed unusual emissions of smoke while the vehicle was being operated on a public road, or who observed the absence of pollution control equipment while the vehicle was stopped for a *Highway Traffic Act* infraction. An additional 300 vehicles were inspected for the presence of pollution control equipment by ministry officers while parked.
 - ☐ In almost all cases where excessive emissions are observed, the car driver receives a 'Form 1' requiring him or her to submit the vehicle for emissions testing. This gives the owner an opportunity

to bring the car up to standard prior to testing.

- ☐ The remaining vehicles were inspected by ministry officers in connection with spills from the vehicle or with use of the vehicle in transporting waste.

■ The results of the entries were:

- ☐ approximately 19,000 of the entries disclosed pollution problems requiring remedial action. These were followed by:
- ☐ approximately 5,600 voluntary cleanups of pollution which had already occurred
- ☐ approximately 8,000 voluntary improvements in control of future pollution
- ☐ approximately 1,000 other actions taking the officer's observations into account, such as decisions on zoning, water taking permits, etc.
- ☐ approximately 120 administrative orders, requiring installation of methods and equipment to reduce or prevent future pollution
- ☐ approximately 200 prosecutions.

APPENDIX 2

EXCERPTS FROM THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Being Part I of the Constitution Act, 1982
Amended by the Constitution Amendment Proclamation, 1983,
effective June 21, 1984

Whereas Canada is founded upon principles that recognize the
supremacy of God and the rule of law:

RIGHTS AND FREEDOMS IN CANADA.

1. The *Canadian Charter of Rights and Freedoms* guarantees the
rights and freedoms set out in it subject only to such reasonable limits
prescribed by law as can be demonstrably justified in a free and
democratic society.

NOTE: If a breach of another Charter section can be shown by a
defendant, the onus shifts to the Crown to *prove* that its action is

- ☐ "prescribed by law", i.e. clearly established by a legal statute,
regulation or other legal document, and not at the whim of an
officer;
- ☐ "demonstrably justifiable in a free and democratic society", i.e.
 - for the sake of truly important public objectives.
 - necessary and useful to achieve those objectives, and
 - not wider than necessary to achieve those objectives.

FUNDAMENTAL FREEDOMS.

2. Everyone has the following fundamental freedoms:
- (a) freedom of conscience and religion;
 - (b) freedom of thought, belief, opinion and expression, including
freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly; and
 - (d) freedom of association.

LIFE, LIBERTY AND SECURITY OF PERSON.

7. Everyone has the right to life, liberty and security of the person and
the right not to be deprived thereof except in accordance with the
principles of fundamental justice.

NOTE: The scope of this section is still very unclear.

"Everyone" includes corporations.

"Life, liberty and security of the person" are terms which refer
primarily to human individuals, not to corporations (some courts

disagree).

Aluminum Co.

Property rights are not included.

"Principles of fundamental justice" include the substance (policy) of legislation, not merely fair procedure.

B.C. Motor Vehicle Reference

- ☐ e.g. An offence which can be punished by imprisonment or probation cannot be an offence of absolute liability; the defendant must always have a defence of due diligence.

B.C. Motor Vehicle Reference

SEARCH OR SEIZURE.

8. Everyone has the right to be secure against unreasonable search or seizure.

NOTE: "Everyone" includes corporations.

Every search or seizure is presumed to be unreasonable unless it was performed

- ☐ with consent, or
- ☐ under the authority of a warrant, issued by a justice or judge, on reasonable grounds.

Warrantless searches or seizures are exceptions, allowed only where it was not feasible to obtain a warrant.

e.g. Hunter v. Southam, Texaco #1

So far, most routine administrative inspections and demands for the production of documents have not been considered to be "unreasonable searches or seizures".

Hufsky

DETENTION OR IMPRISONMENT.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

NOTE: "Arbitrarily" means except on reasonable (or at least "articulable") grounds.

"Detention" includes every time a person's freedom of movement is impeded by a demand or direction from a person in authority.

Therens

- ☐ e.g. Waving down drivers for random checks of their licences and insurance

Ladouceur, Hufsky

ARREST OR DETENTION.

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay and to be informed of that right; and

- (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

NOTE: Officers cannot ask any questions or seize any evidence before advising a detained person of their right to counsel. The officer must also take positive steps to help the detained person contact a lawyer, e.g. by providing a telephone, a phone book, and privacy.

PROCEEDINGS IN CRIMINAL AND PENAL MATTERS

11. Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (e) not to be denied reasonable bail without just cause;
- (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

NOTE: Applies only to prosecutions; does not apply to protective/regulatory procedures such as control order, stop orders, etc.
Trumbley & Pugh v. Fleming

Malartic

Kay Cee Kay Restaurants

Right to trial within a reasonable time: applies only to delay after a charge is laid.

Key factors to be considered:

- ☐ has the defendant's ability to defend itself been impaired by

by the passage of time?

- ☐ did the defendant cause or consent to any delays?
- ☐ was the case so complex as to require extra time to prepare?
- ☐ what resources were available to the Crown to avoid the delay? (This is not always accepted to excuse a delay.)

Mills

Right to be presumed innocent.

Reverse onus clauses which require a defendant to prove his innocence are unconstitutional.

Oakes

However, it remains possible to create an offence of strict liability, especially in the regulatory area.

Lees Poultry

Rule against Double Jeopardy.

A person who has been finally convicted or acquitted of an offence may not be again charged with the same offence arising out of the same facts.

D'Attore

However an administrative order does not bar a prosecution and vice versa.

Eagle Disposal

Pelissero

Also, multiple convictions may be entered arising out of the same facts, if each charge includes different factual elements, or harm to a different victim.

Krug

Prince

TREATMENT OR PUNISHMENT

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

SELF-INCRIMINATION.

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

NOTE: Evidence given by anyone in any court or similar proceeding cannot be used later in a proceeding against that person, either

- ☐ by reading it into evidence, or
- ☐ by cross-examining him/her on it, even in a second trial on the same charge.

Mannion

EQUALITY BEFORE AND UNDER LAW AND EQUAL PROTECTION AND
BENEFIT OF LAW — Affirmative action programs.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

NOTE: By s. 32(2) of the Constitution Act, 1982, the above section came into force April 17, 1985.

Every individual has the right to be treated the same as every other individual in similar circumstances. This is *not* limited to preventing discrimination on the traditional grounds of race, creed, colour, etc.

e.g. it may be argued that one waste hauler may not be prosecuted for using an unlicensed waste disposal site if others using the same or similar sites are not prosecuted.

ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS —
Exclusion of evidence bringing administration of justice into disrepute.

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

NOTE: Any evidence obtained following (not necessarily *because of*) a Charter breach will be excluded, if the trial judge thinks its admission 'could bring the administration of justice into disrepute'.

Key considerations:
good faith of the officers
severity of the breach.

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

- (2) The Constitution of Canada includes
- (a) the *Canada Act 1982*, including this Act;
 - (b) the Acts and orders referred to in the schedule; and
 - (c) any amendment to any Act or order referred to in paragraph (a) or (b).

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

APPENDIX 3

ENVIRONMENTAL PROTECTION ACT

1.—(1) In this Act,

Interpretation

- (a) "adverse effect" means one or more of,
 - (i) impairment of the quality of the natural environment for any use that can be made of it,
 - (ii) injury or damage to property or to plant or animal life,
 - (iii) harm or material discomfort to any person,
 - (iv) an adverse effect on the health of any person,
 - (v) impairment of the safety of any person,
 - (vi) rendering any property or plant or animal life unfit for use by man,
 - (vii) loss of enjoyment of normal use of property, and
 - (viii) interference with the normal conduct of business;
- (aa) "air" means open air not enclosed in a building, structure, machine, chimney, stack or flue;
- (ab) "analyst" means an analyst appointed under this Act;
- (b) "Board" means the Environmental Appeal Board;
- (c) "contaminant" means any;solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect.
- (ca) "discharge", when used as a verb, includes add, deposit, leak or emit and, when used as a noun, includes addition, deposit or emission or leak.
- (cb) "document" includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device;
- (d) "Environmental Assessment Board" means the Environmental Assessment Board under the *Environmental Assessment Act*;
- (da) "inspection" includes an audit, examination, survey, test and inquiry;

- (e) "land" means surface land not enclosed in a building, land covered by water and all subsoil, or any combination or part thereof;
- (f) "local board" means a school board, public utility commission, transportation commission, public library board, board of park management, local board of health, board of commissioners of police, planning board, or any other board, commission, committee, body of local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes, including school purposes, of a municipality or of two or more municipalities or parts thereof;
- (g) "local municipality" means a city, town, village or township;
- (h) "Minister" means the Minister of the Environment;
- (i) "Ministry" means the Ministry of the Environment;
- (j) "municipality" means the corporation of a county, metropolitan area, regional area, district area, city, town, village, township or improvement district and includes a local board thereof and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory;
- (k) "natural environment" means the air, land and water, or any combination or part thereof, of the Province of Ontario;
- (l) "person" includes a municipality, as defined in this subsection;
- (m) "person responsible" means the owner, or the person in occupation or having the charge, management or control of a source of contaminant;
- (ma) "place" includes a building, structure, machine, vehicle or vessel.
- (n) "provincial officer" means a person who is designated by the Minister as a provincial officer for the purposes of this Act and the regulations;
- (o) "regulations" means the regulations made under this Act;
- (p) "source of contaminant" means anything that discharges into the natural environment any contaminant;

(q) "water" means surface water and ground water, or either of them.

(2) In this Act, "the Director" means a Director appointed under section 4.

Idem,
Director

(3) A municipality that is convicted of an offence under this Act is liable to the penalty provided for a corporation convicted of the offence.

Idem,
penalties

1a. A contaminant that is discharged into the air within a building or structure as a result of the discharge of the same or another contaminant in another building or structure shall be deemed to be discharged into the natural environment by the owner or the person who has the charge, management or control of the contaminant discharged in the other building or structure.

Secondary
discharge
within
building

2. The purpose of this Act is to provide for the protection and conservation of the natural environment.

Purpose of
Act

Spills (Part IX)

83.—(1) For the purpose of carrying out any duty imposed or order or direction made or given under this Part, any person subject to the duty or to whom the order or direction is made or given and that person's employees and agents may,

Entry and
removal

- (a) enter any place;
- (b) construct structures or use machinery, structures, materials and equipment therein or thereon; and
- (c) remove therefrom the pollutant or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant.

(2) The rights set out in subsection (1) may be enforced by application without notice to a judge of the Supreme Court or a local judge of the High Court by a person, employee or agent referred to in subsection (1).

Enforcement
of right of
entry, etc.

(3) Where the judge or local judge is satisfied that there is reasonable ground for believing that it is necessary to do anything mentioned in subsection (1), the judge or local judge may issue an order authorizing the person and the person's employees and agents or any one or more of them to do anything mentioned in subsection (1) and specified in the order.

Order by
judge

(4) An order under subsection (3) shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When to be
executed

Provincial Officers

126.—(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

Inspection by
provincial
officer

- (a) entering any part of the natural environment to ascertain the extent, if any, to which contaminants have caused an adverse effect, the causes therefor, and how any adverse effect may be prevented, eliminated or ameliorated and the natural environment restored;
- (b) entering any place in which the provincial officer reasonably believes can be found waste to which Part V applies;
- (c) entering any place in or from which the provincial officer reasonably believes a contaminant is being, has been or may be discharged into the natural environment;
- (d) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence, certificate of approval, provisional certificate of approval, program approval, agreement or order under this Act or the regulations, or
 - (ii) the discharge of a contaminant into the natural environment;
- (e) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence, approval, certificate of approval, provisional certificate of approval, program approval, agreement or order under this Act or the regulations;
- (f) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is being operated in contravention of this Act or the regulations,
 - (ii) is discharging or has discharged a contaminant that causes or is likely to cause an adverse effect,
 - (iii) is or is required to be subject to or referred to in a certificate of approval, provisional cer-

tificate of approval or order under this Act or the regulations, or

- (iv) is being used in the commission of an offence under this Act;
- (g) stopping any vehicle or vessel to ascertain whether the vehicle or vessel complies with this Act and the regulations;
- (h) entering any place where a motor, motor vehicle or beverage container regulated by or under this Act is stocked, displayed, sold or offered for sale to carry out his or her duties under Part III or VIII, as the case may be;
- (i) entering any establishment for the repair of motors or motor vehicles, to carry out his or her duties under Part III;
- (j) entering any ice shelter to carry out his or her duties under Part IV;
- (k) entering any abandoned motor vehicle to carry out his or her duties under Part VI;
- (l) entering any place where the provincial officer reasonably believes the permit and plates of a vehicle may be found in order to seize them in accordance with section 47a or 47b;
- (m) where a pollutant as defined in Part IX is spilled and is likely to cause an adverse effect, entering any place for the purpose of carrying out any duty imposed or order or direction made or given under that Part;
- (n) making necessary excavations;
- (o) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (p) taking samples;
- (q) recording or copying any information by any method;
- (r) requiring the production of any document that is required to be kept under this Act or the regulations, and any other document that is related to the purposes of the inspection;
- (s) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (r) for the purpose of making copies or extracts and promptly returning them to the person who produced them; and

(t) making reasonable inquiries of any person, orally or in writing.	
(2) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such.	Requirement to stop
(3) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection.	Identification of provincial officers
(4) A provincial officer who exercises the power set out in clause (1) (t) may exclude from the questioning any person except counsel for the individual being questioned.	Power to exclude persons
(5) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 127.	Entry to dwellings
(6) A provincial officer who exercises any power set out in subsection (1) or 126a (1) may, if the provincial officer is designated as such under the <i>Ontario Water Resources Act</i> or the <i>Pesticides Act</i> , as the case may be, do anything authorized by,	Power to administer other statutes R.S.O. 1980, cc. 361, 376
(a) subsection 10 (1) or 10a (1) of the <i>Ontario Water Resources Act</i> ; or	
(b) subsection 19 (1) of the <i>Pesticides Act</i> .	
126a. —(1) Where a thing, including a vehicle or vessel, is discharging or is likely to discharge a contaminant into the natural environment which causes or is likely to cause an adverse effect, a provincial officer may, without a warrant or court order, protect or conserve the natural environment by	Detention or removal
(a) giving the person responsible for the thing a direction in writing requiring that the thing be detained at the place where it is found; or	
(b) removing the thing or causing it to be removed from the place where it is found and giving a receipt for it.	
(2) A person shall not detain or remove a thing under subsection (1) for more than two days excluding holidays without the consent of the person responsible for it except under the authority of an order under section 127.	
(3) Subsection 126 (3) applies with necessary modifications to a provincial officer exercising the power set out in subsection (1).	

127.—(1) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 126 (1) (a) to (s) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 126 (1) (a) to (s);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 126 (1) (a) to (s);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 126 (1) (a) to (s) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 126 (1) (a) to (s) and specified in the order for the period of time set out in the order.

(1a) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground to believe that a thing detained or removed under subsection 126a (1) should be detained or removed, as the case may be, for longer than two days excluding holidays to protect or conserve the natural environment, the judge or justice may issue or renew an order authorizing a provincial officer to detain or remove the thing for the period of time set out in the order.

(2) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) or (1a) before or after expiry for one or more periods each of which is not more than thirty days.

(2a) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.	When to be executed
(2b) An order under this section for a reason mentioned in subsection (1) may be issued or renewed upon application without notice.	When notice not required
(2c) An order under this section for a reason mentioned in subsection (1a) shall not be issued or renewed except upon application with notice to the person responsible for the thing to be detained or removed.	When notice required
(3) Every person responsible for a source of contaminant shall furnish such information as a provincial officer requires for the purposes of this Act or the regulations.	
127a. A provincial officer may detain samples and copies obtained under section 126 or 127 for any period and for any of the purposes of this Act and the regulations.	Samples and copies
127b. —(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under section 126 or 127 if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention.	Seizure
(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.	Possession
(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.	Notice of reason for seizure
127c. —(1) In this section, "offence" means an offence under this Act related to,	Definition
(a) the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect; or	
(b) hazardous waste or hauled liquid industrial waste.	
(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,	Search by provincial officer re actual pollution
(a) that an offence has been committed;	
(b) that there is in such place any thing that will afford evidence as to the commission of the offence; and	
(c) that there are exigent circumstances that make it impractical to obtain a search warrant.	
(3) A provincial officer may seize any thing that is found by	Seizure

the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Receipt

127d.—(1) A provincial officer who seizes any thing during an inspection or search under section 127b or 127c shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report

Report to justice

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 127b or 127c.

Application of R.S.O. 1980, c. 400, ss. 143, 144

127e. A provincial officer may use such force as is reasonably necessary,

Use of force

- (a) to carry out an order or direction issued under this Part or Part IX;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or
- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act or the regulations.

127f. A provincial officer who makes or causes the making of an excavation in the course of his or her duties under this Act shall restore the property, so far as is reasonably possible, to the condition it was in before the excavation was made.

Restoration

127g. It is a condition of every licence, permit, certificate of approval or provisional certificate of approval under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 126, 126a or 127 of this Act, section 10, 10a or 10b of the *Ontario Water Resources Act* or section 19 or 19a of the *Pesticides Act* of any place, other than any room actually used as a dwelling, to which the licence, certificate of approval or provisional certificate of approval relates.

Condition

128.—(1) Whenever a provincial officer is required or empowered by this Act or the regulations to do or direct the doing of anything, such provincial officer may take such steps and employ such assistance as is necessary to accomplish what is required, and may, when obstructed in so doing, call for the assistance of any member of the Ontario Provincial Police

Calling for assistance of member of police force

Force or the police force in the area where the assistance is required and it is the duty of every member of a police force to render such assistance.

(2) A provincial officer, for the purpose of carrying out the provisions of this Act and the regulations, may require the driver of any motor vehicle to stop and may inspect the motor vehicle and require the driver of the motor vehicle to submit the motor vehicle, together with its equipment and any trailer attached thereto, to such examinations and tests at such place or places and time or times as the provincial officer considers expedient and where the provincial officer considers it necessary or expedient he may call for the assistance of any member of the Ontario Provincial Police Force or the police force in the area where the assistance is required and it is the duty of every member of a police force to render such assistance.

Inspection of
motor
vehicles

(3) Every driver of a motor vehicle shall stop or submit the motor vehicle, together with its equipment and any trailer attached, to such examinations and tests as may be required by a provincial officer or a member of a police force referred to in subsection (2).

Duty of
driver of
motor vehicle

129. No person shall hinder or obstruct a provincial officer in the lawful performance of his duties or furnish a provincial officer with false information or refuse to furnish him with information required for the purposes of this Act and the regulations.

Obstruction
of provincial
officer

130.—(1) Except as to information in respect of the deposit, addition, emission or discharge of a contaminant into the natural environment, every provincial officer shall preserve secrecy in respect of all matters that come to his knowledge in the course of any survey, examination, test or inquiry under this Act or the regulations and shall not communicate any such matters to any person except,

Matters
confidential

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) Except in a proceeding under this Act or the regulations, no provincial officer shall be required to give testimony, other than testimony in respect of the deposit, addition, emission or discharge of a contaminant into the natural environment, in any civil suit or proceeding with regard to information obtained by him in the course of any survey, examination, test

Testimony in
civil suit

or inquiry under this Act or the regulations.

134b—(1) In this section, “Board” means the Ontario Labour Relations Board. Interpretation

- (2) No employer shall, Unjust dismissal
- (a) dismiss an employee;
 - (b) discipline an employee;
 - (c) penalize an employee; or
 - (d) coerce or intimidate or attempt to coerce or intimidate an employee,

because the employee has complied or may comply with,

- (e) the *Environmental Assessment Act*; R.S.O. 1980, c. 140
- (f) the *Environmental Protection Act*; R.S.O. 1980, c. 141
- (g) the *Fisheries Act* (Canada); R.S.C. 1970, c. F-14
- (h) the *Ontario Water Resources Act*; or R.S.O. 1980, c. 361
- (i) the *Pesticides Act*, R.S.O. 1980, c. 376

or a regulation under one of those Acts or an order, term or condition, certificate of approval, licence, permit or direction under one of those Acts or because the employer has sought or may seek the enforcement of one of those Acts or a regulation under one of those Acts or has given or may give information to the Ministry or a provincial officer or has been or may be called upon to testify in a proceeding related to one of those Acts or a regulation under one of those Acts.

(3) A person complaining of a contravention of subsection (2) may file the complaint in writing with the Board. Complaint

- (4) Where a complaint is filed in writing with the Board. Where complaint referred to O.L.R.B.
- (a) the Board may authorize a labour relations officer to inquire into the complaint: or
 - (b) the Board may inquire into the complaint.

(5) A labour relations officer who is authorized to inquire into the complaint shall make his inquiry forthwith and shall endeavour to effect a settlement of the matter complained of and shall report the results of his inquiry and endeavours to the Board. Labour relations officer

(6) Where the labour relations officer is unable to effect a settlement of the matter complained of, the Board may inquire into the complaint. Where settlement not reached

(7) Where the Board inquires into the complaint and is satisfied that an employer has contravened subsection (2), the Board shall determine what, if anything, the employer shall do or refrain from doing with respect thereto. Inquiry by O.L.R.B.

<p>(8) A determination under subsection (7) may include, but is not limited to, one or more of,</p>	<p>Determination</p>
<p>(a) an order directing the employer to cease doing the act or acts complained of;</p>	
<p>(b) an order directing the employer to rectify the act or acts complained of; or</p>	
<p>(c) an order directing the employer to reinstate in employment the complainant, with or without compensation, or to compensate in lieu of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer.</p>	
<p>(9) A determination by the Board under subsection (7) applies notwithstanding a provision of an agreement.</p>	<p>Application</p>
<p>(10) On an inquiry under this section, the burden of proof that an employer did not contravene subsection (2) lies upon the employer.</p>	<p>Burden of proof</p>
<p>(11) Where there is a failure to comply with a term of the determination made under subsection (7), the complainant, after the expiration of fourteen days from the date of the release of the determination by the Board or from the date provided in the determination for compliance, whichever is later, may notify the Board in writing of the failure.</p>	<p>Failure to comply</p>
<p>(12) Where the Board receives notice in accordance with subsection (11), the Board shall file in the office of the Registrar of the Supreme Court a copy of the determination, exclusive of the reasons therefor, if any, and the determination shall be entered in the same way as a judgment or order of the court and is enforceable as such.</p>	<p>Filing to determination</p>
<p>(13) Where the matter complained of has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed, the settlement is binding and shall be complied with according to its terms, and a complaint that a settlement has not been complied with shall be deemed to be a complaint under subsection (3).</p>	<p>Compliance with settlement</p>
<p>(14) The <i>Labour Relations Act</i> and the regulations under that Act apply with necessary modifications in respect of a proceeding under subsections (2) to (13).</p>	<p>Application of R.S.O. 1980, c. 228</p>
<p>(15) For the purposes of subsections (2) to (14), an act mentioned in subsection (2) that is performed on behalf of an employer shall be deemed to be the act of the employer.</p>	<p>Act performed on behalf of employer</p>

APPENDIX 4

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

- 11.—(1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public. Obligation, to disclose
- (2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so. Notice
- (3) The notice shall contain, Contents of notice
- (a) a statement that the head intends to release a record or a part of a record that may effect the interests of a person;
 - (b) a description of the contents of the record or part that relate to the person; and
 - (c) a statement that if the person makes representations forthwith to the head as to why the record or part thereof should not be disclosed, those representations will be considered by the head.
- (4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed. Representations
- 14.—(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to, Law enforcement
- (a) interfere with a law enforcement matter;
 - (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
 - (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
 - (e) endanger the life or physical safety of a law en-

forcement officer or any other person;

- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

(2) A head may refuse to disclose a record,

Idem

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
- (b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.

Refusal to confirm or deny existence of record

(4) Despite clause (2)(a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario.

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program

Idem

including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

17.—(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to, Third party information

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; or
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure. Consent to disclosure

28.—(1) Before a head grants a request for access to a record, Notice to affected person

- (a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21 (1) (f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

(2) The notice shall contain,

- (a) a statement that the head intends to release a record or part thereof that may affect the interests of the person;
- (b) a description of the contents of the record or part thereof that relate to the person; and
- (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed.

Contents of notice

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, where there has been an extension of a time limit under subsection 27 (1), within that extended time limit.	Time for notice
(4) Where a head gives notice to a person under subsection (1), the head shall also give the person who made the request written notice of delay, setting out, <ul style="list-style-type: none"> (a) that the record or part thereof may affect the interests of another party; (b) that the other party is being given an opportunity to make representations concerning disclosure; and (c) that the head will within thirty days decide whether or not to disclose the record. 	Notice of delay
(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed.	Representation re disclosure
(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally.	Representation in writing
(7) The head shall, within thirty days after the notice under subsection (1) is given, but not before the earlier of, <ul style="list-style-type: none"> (a) the day the response to the notice from the person to whom the information relates is received; or (b) twenty-one days after the notice is given, decide whether or not to disclose the record or the part thereof and give written notice of the decision to the person to whom the information relates and the person who made the request.	Decision re disclosure
(8) Where a head decides to disclose a record or part thereof under subsection (7), the head shall state in the notice that, <ul style="list-style-type: none"> (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and (b) the person who made the request will be given access to the record or to a part thereof, unless an appeal of the decision is commenced within thirty days after the notice is given. 	Notice of head's decision to disclose
(9) Where, under subsection (7), the head decides to disclose the record or a part thereof, the head shall give the person who made the request access to the record or part thereof within thirty days after notice is given under subsection (7).	Access to be given unless affected person appeals

tion (7), unless the person to whom the information relates asks the Commissioner to review the decision.

APPENDIX 5

ONTARIO WATER RESOURCES ACT

4.—(3) The Minister may designate in writing one or more of-
ficers or employees of the Ministry or other persons as pro-
vincial officers for the purposes of this Act and the regula-
tions. Provincial
officers

(4) A person who is an agent of the Minister for the purposes
of subsection 10(1), as it existed immediately before section
52 of the *Environment Statute Law Amendment Act*, 1988
comes into force, shall be deemed to be designated under
subsection (3) until the 30th day of June, 1989. Idem
1968m.c. ...

9b. In sections 10 to 10i, "adverse effect", "contaminant"
and "natural environment" have the same meanings as in the
Environmental Protection Act.

10.—(1) For the administration of this Act or the regulations,
a provincial officer may, without a warrant or court order, at
any reasonable time and with any reasonable assistance,
make inspections, including, Inspection by
provincial
officer

- (a) entering any part of the natural environment to
ascertain the extent, if any, to which contaminants
have caused an adverse effect, the causes there-
for, and how any adverse effect may be prevented,
eliminated or ameliorated and the natural environ-
ment restored;
- (b) entering any place to ascertain the quality or
quantity of water, the reasons therefor, and how
any impairment thereof may be prevented, elimi-
nated or ameliorated;
- (c) entering any place in or from which the provincial
officer reasonably believes a contaminant is being,
has been or may be discharged into the natural
environment;
- (d) entering any place that the provincial officer rea-
sonably believes is likely to contain documents
related to,
 - (i) an activity or undertaking that is, or is required
to be, the subject of a permit, licence, ap-
proval, requirement, direction, report, notice,
agreement or order under this Act or the reg-
ulations, or
 - (ii) the discharge of a contaminant into the natu-
ral environment;

- (e) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence, approval, requirement, direction, report, notice, agreement or order under this Act or the regulations;
- (f) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is being operated in contravention of this Act or the regulations,
 - (ii) is discharging or has discharged a contaminant that causes or is likely to cause an adverse effect,
 - (iii) is or is required to be subject to or referred to in a permit, licence, approval, requirement, direction, report, notice, agreement or order under this Act or the regulations, or
 - (iv) is being used in the commission of an offence under this Act;
- (g) stopping any vehicle or vessel to ascertain whether the vehicle or vessel complies with this Act and the regulations;
- (h) making necessary excavations;
- (i) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;
- (j) taking samples;
- (k) recording or copying any information by any method;
- (l) requiring the production of any document that is required to be kept under this Act or the regulations, and any other document that is related to the purposes of the inspection;
- (m) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (1) for the purpose of making copies or extracts and promptly returning them to the person who produced them; and
- (n) making reasonable inquiries of any person, orally or in writing.

(2) The Minister and his employees and agents may for his purposes, without consent and without compensation, lay, maintain, repair, alter or replace such pipes and appurtenances thereto as he considers necessary in, upon, through, over and under any highway or road under the jurisdiction and control of any public authority.

Right to lay and maintain pipes under roads

(3) Lands, buildings, highways or roads disturbed by the exercise of any of the powers mentioned in subsection (1) or (2) shall be restored to their original condition without unnecessary delay.	Land, etc., to be restored
(3a) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such.	Requirement to stop
(3b) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection.	Identification of provincial officer
(3c) A provincial officer who exercises the power set out in clause (1) (n) may exclude from the questioning any person except counsel for the individual being questioned.	Power to exclude persons
(3d) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 10b.	Entry to dwellings
(3e) A provincial officer who exercises any power set out in subsection (1) or 10a (1) may, if the provincial officer is designated as such under the <i>Environmental Protection Act</i> or the <i>Pesticides Act</i> , as the case may be, do anything authorized by, <ul style="list-style-type: none"> (a) subsection 126 (1) or 126a (1) of the <i>Environmental Protection Act</i>; or (b) subsection 19 (1) of the <i>Pesticides Act</i>. 	Power to administer other statutes
(4) Every person who hinders or obstructs any employee or agent of the Minister in the exercise of his powers or the performance of his duties under subsection (1) is guilty of an offence.	Offence
10a. —(1) Where a thing, including a vehicle or vessel, is discharging or is likely to discharge a contaminant into the natural environment which causes or is likely to cause an adverse effect, a provincial officer may, without a warrant or court order, protect or conserve the natural environment by, <ul style="list-style-type: none"> (a) giving the person responsible for the thing a direction in writing requiring that the thing be detained at the place where it is found; or (b) removing the thing or causing it to be removed from the place where it is found and giving a receipt for it. 	Detention or removal order
(2) A person shall not detain or remove a thing under subsection (1) for more than two days excluding holidays	Limitation

without the consent of the person responsible for it except under the authority of an order under section 10b.

(3) Subsection 10 (3b) applies with necessary modifications to a provincial officer exercising the power set out in subsection (1). Idem

10b.—(1) Where a provincial judge or justice of the peace is satisfied on evidence upon oath by a provincial officer that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 10 (1) (a) to (m) and that the provincial official officer may not be able to effectively carry out his or her duties without an order under this section because, Entry or inspection order

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 10 (1) (a) to (m);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 10 (1) (a) to (m);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 10 (1) (a) to (m) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 10 (1) (a) to (m) and specified in the order for the period of time set out in the order.

(2) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground to believe that a thing detained or removed under subsection 10a (1) should be detained or removed, as the case may be, for longer than two days excluding holidays to protect or conserve the natural environment, the judge or justice may issue or renew an order authorizing a provincial officer to detain or remove the thing for the period of time set out in the order. Detention or removal order

(3) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) or (2) before or after expiry for one or more periods each of which is not more than thirty days.	Renewal
(4) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.	When to be executed
(5) An order under this section for a reason mentioned in subsection (1) may be issued or renewed upon application without notice.	When notice not required
(6) An order under this section for a reason mentioned in subsection (2) shall not be issued or renewed except upon application with notice to the person responsible for the thing to be detained or removed.	When notice required
10c. A provincial officer may detain samples and copies obtained under section 10 or 10b for any period and for any of the purposes of this Act and the regulations.	Samples and copies
10d. —(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under section 10 or 10b if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention.	Seizure
(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.	Possession
(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.	Notice of reason for seizure
10e. —(1) In this section, “offence” means an offence under this Act related to the discharge of any material that may impair the quality of the water of any water or water-course.	Definition
(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,	Search by provincial officer re actual pollution
(a) that an offence has been committed;	
(b) that there is in such place any thing that will afford evidence as to the commission of the offence; and	
(c) that there are exigent circumstances that make it impractical to obtain a search warrant.	
(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will	Seizure

afford evidence of the commission of an offence.

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized. Receipt

10f.—(1) A provincial officer who seizes any thing during an inspection or search under section 10d or 10e shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace. Report to justice

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 10d or 10e. Application of R.S.O. 1980, c. 400, ss. 143, 144

10g. A provincial officer may use such force as is reasonably necessary. Use of force

- (a) to carry out an order issued under this Act;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or
- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act or the regulations.

10h. A provincial officer who makes or causes the making of an excavation in the course of his or her duties under this Act shall restore the property, so far as is reasonably possible, to the condition it was in before the excavation was made. Restoration

10i. It is a condition of every licence, permit, approval, requirement, direction, report, notice, agreement or order under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 10, 10a or 10b of this Act, section 126, 126a or 127 of the *Environmental Protection Act* or section 19 or 19a of the *Pesticides Act* of any place, other than any room actually used as a dwelling, to which the licence, certificate of approval or provisional certificate of approval relates. Condition

APPENDIX 6

PESTICIDES ACT

17.—(1) The Minister may designate in writing one or more officers or employees of the Ministry or other persons as provincial officers for the purposes of this Act and the regulations.

Provincial
officers

(4) Every person responsible for a pesticide or for a substance or thing containing a pesticide that is the subject of an investigation by a provincial officer, and every person who assists such a person, shall furnish such information as the provincial officer requires for the purpose of the investigation.

Information

(5) No person who is responsible for a pesticide or for a substance or thing containing a pesticide or who assists such a person shall hinder or obstruct a provincial officer in the lawful performance of his duties or furnish a provincial officer with false information. R.S.O. 1980, c. 376, s. 17.

Obstruction
of provincial
officer

19.—(1) For the administration of this Act or the regulations, a provincial officer may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, including,

Inspection by
provincial
officer

- (a) entering any place in which the provincial officer reasonably believes a pesticide can be found;
- (b) entering any place in or from which the provincial officer reasonably believes a pesticide is being, has been or may be discharged into the environment;
- (c) entering any place that the provincial officer reasonably believes is likely to contain documents related to,
 - (i) an activity or undertaking that is, or is required to be, the subject of a permit, licence or order under this Act or the regulations, or
 - (ii) the discharge of a pesticide into the environment;
- (d) entering any place that the provincial officer reasonably believes is, or is required to be, subject to or referred to in a permit, licence or order under this Act or the regulations;
- (e) stopping any vehicle or vessel that the provincial officer reasonably believes,
 - (i) is or is required to be subject to or referred

to in a permit, licence or order under this Act or the regulations,	
(ii) contains a pesticide, or	
(iii) is being or may be used in the performance of an extermination;	
(f) entering any place where a pesticide is stocked, displayed, sold or offered for sale;	
(g) requiring that any thing be operated, used or set in motion under conditions specified by the provincial officer;	
(h) taking samples;	
(i) recording or copying any information by any method;	
(j) requiring the production of any document that is required to be kept under this Act or the regulations and any other document that is related to the purposes of the inspection;	
(k) upon giving a receipt therefor, removing from a place documents produced pursuant to a requirement under clause (j) for the purpose of making copies or extracts and promptly returning them to the person who produced them; and	
(l) making reasonable inquiries of any person, orally or in writing.	
(2) The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by a provincial officer who is readily identifiable as such.	Requirement to stop
(3) Upon request, a provincial officer who exercises a power set out in subsection (1) shall identify himself or herself as a provincial officer either by the production of a copy of his or her designation or in some other manner and shall explain the purpose of the inspection.	Identification of provincial officers
(4) A provincial officer who exercises the power set out in clause (1)(l) may exclude from the questioning any person except counsel for the individual being questioned.	Power to exclude persons
(5) A person shall not exercise a power conferred by this Act to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order under section 19a.	Entry to dwellings
(6) A provincial officer who exercises any power set out in subsection (1) may, if the provincial officer is designated as such under the <i>Environmental Protection Act</i> or the <i>Ontario Water Resources Act</i> , as the case may be, do anything authorized by,	Power to administer other statutes R.S.O. 1980, c. 141, 361

- (a) subsection 126 (1) or 126a (1) of the *Environmental Protection Act*; or
- (b) subsection 10 (1) or 10a (1) of the *Ontario Water Resources Act*.

19a.—(1) Where a provincial judge or justice of the peace is satisfied, on evidence upon oath by a provincial officer, that there is reasonable ground for believing that it is appropriate for the administration of this Act or the regulations for the provincial officer to do anything set out in clauses 19 (1) (a) to (k) and that the provincial officer may not be able to effectively carry out his or her duties without an order under this section because,

Inspection
order

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the provincial officer from doing anything set out in clauses 19 (1) (a) to (k);
- (c) there is reasonable ground to believe that a person may prevent a provincial officer from doing anything set out in clauses 19 (1) (a) to (k);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the provincial officer to obtain an order under this section without delay if access is denied; or
- (e) there is reasonable ground to believe that an attempt by the provincial officer to do anything set out in clauses 19 (1) (a) to (k) without the order might defeat the purpose thereof or endanger human life, health, property or the natural environment,

the judge or justice may issue or renew an order authorizing a provincial officer to do anything set out in clauses 19 (1) (a) to (k) and specified in the order for the period of time set out in the order.

(2) Unless renewed, an order under this section expires not later than thirty days after the date on which it is made, and may be renewed for any reason set out in subsection (1) before or after expiry for one or more periods each of which is not more than thirty days.

Renewal

(3) An order under this section shall be carried out between 6 a.m. and 9 p.m. standard time, unless the order otherwise authorizes.

When to be
executed

(4) An order under this section may be issued or renewed upon application without notice.

Notice not
required

19b. A provincial officer may detain samples and copies obtained under section 19 or 19a for any period and for any of the purposes of this Act and the regulations.

Samples and
copies

19c.—(1) A provincial officer may, without a warrant or court order, seize any thing that is produced to the provincial officer, or that is in plain view, during an inspection under this Act if the provincial officer reasonably believes that there has been a contravention of this Act or the regulations and that the thing will afford evidence of the contravention.

Seizure

(2) The provincial officer may remove the thing seized or may detain it in the place where it is seized.

Possession

(3) The provincial officer shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Notice of
reason for
seizure

19d.—(1) In this section, "offence" means an offence under section 4, 6 or 7.

Definition

(2) A provincial officer may, without a search warrant, search any place other than a room actually used as a dwelling if the provincial officer has reasonable ground to believe,

Search by
provincial
officer re-
actual
pollution

- (a) that an offence has been committed;
- (b) that there is in such place any thing that will afford evidence as to the commission of the offence; and
- (c) that there are exigent circumstances that make it impractical to obtain a search warrant.

(3) A provincial officer may seize any thing that is found by the provincial officer during a search under subsection (2) if the provincial officer reasonably believes that the thing will afford evidence of the commission of an offence.

Seizure

(4) A provincial officer who seizes any thing during a search under subsection (2) shall give a receipt for the thing to the person from whom it was seized.

Receipt

19e.—(1) A provincial officer who seizes any thing during an inspection or search under section 19c or 19d shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Report to
justice

(2) Sections 143 and 144 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer during an inspection or search under section 19c or 19d.

Application
of
R.S.O. 1980,
c. 400,
ss. 143, 144

19f. A provincial officer may use such force as is reasonably necessary,

Use of force

- (a) to carry out an order issued under this Act;
- (b) to execute a warrant issued under the *Provincial Offences Act*; or
- (c) to prevent the destruction of any thing that the provincial officer reasonably believes may afford evidence of a contravention of this Act.

19g. It is a condition of every permit or licence under this Act that the holder must forthwith on request permit provincial officers to carry out inspections authorized by section 19 or 19a of this Act, section 126, 126a or 127 of the *Environmental Protection Act* or section 10, 10a or 10b of the *Ontario Water Resources Act* of any place, other than any room actually used as a dwelling, to which the permit or licence relates.

Condition

R.S.O. 1980,
cc. 141, 361

APPENDIX 7

PROVINCIAL OFFENCES ACT

132.— (1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so. Production of process

(2) It is the duty of every one who arrests a person, whether with or without warrant, to give notice to that person, where it is feasible to do so, of the reason for the arrest. Notice of reason for arrest

142.—(1) Where a justice is satisfied by information upon oath that there is reasonable ground to believe that there is in any building, receptacle or place, Search warrants

- (a) anything upon or in respect of which an offence has been or is suspected to have been committed; or
- (b) anything that there is reasonable ground to believe will afford evidence as to the commission of an offence,

he may at any time issue a warrant in the prescribed form under his hand authorizing a police officer or person named therein to search such building, receptacle or place for any such thing, and to seize and carry it before the justice issuing the warrant or another justice in the county or district in which the provincial offences court having jurisdiction in respect of the offence is situated to be dealt with by him according to law.

(2) Every search warrant shall name a date upon which it expires, which date shall be not later than fifteen days after its issue. Expiration

(3) Every search warrant shall be executed between 6 a.m. and 9 p.m. standard time, unless the justice by the warrant otherwise authorizes. R.S.O. 1980, c. 400, s. 142. When to be executed

143.—(1) Where any thing is seized and brought before a justice, he shall by order, Detention of things seized

- (a) detain it or direct it to be detained in the care of a person named in the order; or
- (b) direct it to be returned.

and the justice may in the order authorize the examination, testing, inspection or reproduction of the thing seized upon such conditions as are reasonably necessary and directed in the order, and may make any other provision as in the opinion of the justice is necessary for its preservation.

(2) Nothing shall be detained under an order made under subsection (1) for a period of more than three months after the time of seizure unless, before the expiration of that period,

Time limit
for detention

- (a) upon application, a justice is satisfied that having regard to the nature of the investigation, its further detention for a specified period is warranted and he so orders; or
- (b) proceedings are instituted in which the thing detained may be required.

(3) Upon the application of the defendant, prosecutor, or person having an interest in a thing detained under subsection (1), a justice may make an order for the examination, testing, inspection or reproduction of any thing detained upon such conditions as are reasonably necessary and directed in the order.

Application
for
examination
and copying

(4) Upon the application of a person having an interest in a thing detained under subsection (1), and upon notice to the defendant, the person from whom the thing was seized, the person to whom the search warrant was issued and any other justice may make an order for the release of any thing detained to the person from whom the thing was seized where it appears that the thing detained is no longer necessary for the purpose of an investigation or proceeding.

Application
for release

(5) Where an order or refusal to make an order under subsection (3) or (4) is made by a justice of the peace, an appeal lies therefrom in the same manner as an appeal from a conviction in a proceeding commenced by means of a certificate. R.S.O. 1980, c. 400, s. 143.

Appeal
where order
by justice of
the peace

144.—(1) Where under a search warrant a person is about to examine or seize a document that is in the possession of a lawyer and a solicitor-client privilege is claimed on behalf of a named client in respect of the document, the person shall, without examining or making copies of the document,

Examination
or seizure of
documents
where privilege
claimed

- (a) seize the document and place it, together with any other document seized in respect of which the same claim is made on behalf of the same client, in a package and seal and identify the package, and
- (b) place the package in the custody of the clerk of the court in the jurisdiction of which the seizure was made or, with the consent of the person and the client, in the custody of another person.

(2) No person shall examine or seize a document that is in the possession of a lawyer without giving him a reasonable

Opportunity
to claim
privilege

opportunity to claim the privilege under subsection (1).

(3) A judge may, upon the *ex parte* application of the lawyer, by order authorize the lawyer to examine or make a copy of the document in the presence of its custodian or the judge, and the order shall contain such provisions as are necessary to ensure that the document is repackaged and resealed without alteration or damage.

Examination
of documents
in custody

(4) Where a document has been seized and placed in custody under subsection (1), the client by or on whose behalf the claim of solicitor-client privilege is made may apply to a judge for an order sustaining the privilege and for the return of the document.

Application
to determine
privilege

(5) An application under subsection (4) shall be by notice of motion returnable not later than thirty days after the date on which the document was placed in custody.

Limitation

(6) The person who seized the document and the Attorney General are parties to an application under subsection (4) and entitled to at least three days notice thereof.

Attorney
General a
party

(7) An application under subsection (4) shall be heard in private and, for the purposes of the hearing, the judge may examine the document and, if he does so, shall cause it to be resealed.

Private
hearing and
scrutiny by
judge

(8) The judge may by order,

Order

- (a) declare that the solicitor-client privilege exists or does not exist in respect of the document;
- (b) direct that the document be delivered up to the appropriate person.

(9) Where it appears to a judge upon the application of the Attorney General or person who seized the document that no application has been made under subsection (4) within the time limit prescribed by subsection (5), the judge shall order that the document be delivered to the applicant. R.S.O. 1980, c. 400, s. 144.

Release of
document
where no
application
under subs. (4)

145. Where, by any other Act, proceedings are authorized to be taken before a court or a justice for an order, including an order for the payment of money, this Act applies with necessary modifications to the proceeding in the same manner as to a proceeding commenced under Part III, and for the purpose,

Orders under
statutes

- (a) in place of an information, the applicant shall complete a statement in the prescribed form under oath attesting, on reasonable and probable grounds, to

the existence of facts that would justify the order sought; and

- (b) in place of a plea, the defendant shall be asked whether or not he wishes to dispute the making of the order. R.S.O. 1980, c. 400, s. 145.

43

APPENDIX 8

PROVINCIAL COURTS ACT

Form 140

INFORMATION TO OBTAIN SEARCH WARRANT UNDER SECTION 142 OF THE PROVINCIAL OFFENCES ACT

Provincial Offences Courts Province of Ontario

This is the information of of
(name)

.....
(address)

..... I have reasonable ground to believe and do believe that
(occupation)

in a certain building, receptacle, or place, namely,
(building, receptacle or place)

of at
(owner) (address)

there are the following thing(s):

(check appropriate box)

- ☐ upon or in respect of which an offence has been or is suspected to have been committed.
- ☐ that there are reasonable grounds to believe will afford evidence as to the commission of an offence.

And I further say that my grounds for so believing are:

.....
.....

Therefore I request that a search warrant be issued to search the said

..... for the said thing(s).
(building, receptacle, or place)

.....
(Signature of informant)

Sworn before me at

this day of

19.....

.....
Provincial Judge or Justice of the Peace

R.R.O. 1980, Reg. 809, Form 139.

Form 141
SEARCH WARRANT UNDER SECTION 142 OF
THE PROVINCIAL OFFENCES ACT

Provincial Offences Courts, Province of Ontario

To and to the police officers of Ontario.

Whereas, on the information upon oath of, I am
satisfied that there are reasonable grounds to believe that

.....
(describe things to be searched for)
.....
.....

(check appropriate box)

☐ upon or in respect of which the offence of contrary to
..... section is suspected to have
been committed, or

☐ that there is reasonable ground to believe will afford evidence as to the commission
of the offence of section

may be found at

(building, place, receptacle)

of at

(address)

hereinafter called the premises.

This is therefore to authorize you to enter such

.....
(name or location of building, receptacle or place)

..... between the hours of 6:00 a.m. and 9:00 p.m. standard time, or

.....
(time warrant to be executed)

and to search there for the said things and to seize them and carry them before me or
another justice in the county or district in which the provincial offences court having jurisdic-
tion in respect of the offence is situated so that they may be dealt with according to the law.

This warrant expires on the day of, 19....., a day not
later than the fifteenth day after its issue.

Issued at

this day of

....., 19.....

.....
Provincial Judge or Justice of the Peace

R.R.O. 1980, Reg. 809, Form 141.

Form 142
STATEMENT UNDER SECTION 145 OF
THE PROVINCIAL OFFENCES ACT

Provincial Offences Courts, Province of Ontario

This is the statement of

of

I have reasonable and probable grounds to believe and do believe that on or about the

..... day of 19....., at
(location)

..... of
(name)

did
(set out facts upon which application for order is made)

and I further believe that the existence of these facts would justify the Provincial Offences

Courts of the of in making the following order:

.....
(describe nature of order sought)

the court being authorized to make this order by

section

.....
(Signature of applicant)

Sworn before me at

this day of

19.....

.....
Provincial Judge or Justice of the Peace

R.R.O. 1980, Reg. 809, Form 142.

Form 147
ORDER UNDER THE PROVINCIAL OFFENCES ACT

Provincial Offences Courts, Province of Ontario

..... PROSECUTOR

AND

..... DEFENDANT

Upon the motion of

made on the day of, 19....., at

☐ in the presence of

☐ prosecutor/defendant

☐ counsel for prosecutor/defendant

☐ agent for prosecutor/defendant

☐ no one appearing for
although duly served with notice

☐ the motion being heard without notice

And upon receiving the evidence of

and
(recite other material considered on motion)

And upon hearing the person(s) present,

1. It is ordered that

2. And it is further ordered that

Ordered at

this day of

19.....

.....
Provincial Judge or Justice of the Peace

R.R.O. 1980, Reg. 809, Form 147.

APPENDIX 9

FISHERIES ACT (CANADA)

35. (1) Subject to subsection (2), a fishery officer or fishery guardian may enter any place, premises, vessel or vehicle in which he believes on reasonable grounds there is any fish, fishing equipment or any books, records or other documents relating to the administration of this Act or the regulations in order to carry out such inspections as he deems necessary to ensure compliance with the Act and the regulations.

(2) Where any place, premises, vessel or vehicle referred to in subsection (1) is a dwelling-house, a fishery officer or fishery guardian may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (3).

(3) Where on *ex parte* application a justice of the peace is satisfied by information on oath

- (a) that the conditions for entry described in subsection (1) exist in relation to a dwelling-house
- (b) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and
- (c) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused

he may issue a warrant under his hand authorizing the fishery officer or fishery guardian named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

(4) In executing a warrant issued under subsection (3), a fishery guardian shall not use force unless

- (a) he is a peace officer or is accompanied by a peace officer, and
- (b) the use of force has been specifically authorized in the warrant.

35.1 (1) A fishery officer with a warrant issued under subsection (2) may search any building, vehicle, vessel or place where he believes on reasonable grounds that any fish taken in contravention of this Act or the regulations, or anything used in contravention thereof, is concealed.

(2) Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in any building, vehicle, vessel or place referred to in subsection (1)

- (a) anything on or in respect of which any contravention under this Act has been or is suspected to have been committed, or
- (b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of any contravention under this Act.

(3) Notwithstanding subsection (1), a fishery officer may exercise the power of search referred to in that subsection without a warrant issued under subsection (2) if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

(4) For the purposes of subsection (3), exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

APPENDIX 10

PEST CONTROLS PRODUCTS ACT (CANADA)

6. The Minister may designate any qualified person as an inspector or analyst for the purposes of this Act. 1968-69, c. 50, s. 6. Inspectors and analysts
7. (1) An inspector may at any reasonable time Power of inspectors
- (a) enter any place or premises for the purpose of carrying into effect any of the provisions of this Act or in which he reasonably believes a control product to which this Act applies is or has been manufactured, stored, sold or used or in which he reasonably believes there is any control product to which this Act applies or any material that is contaminated by a control product or that is used or capable of being used in this manufacture of a control product;
 - (b) examine any such control product or material found therein in bulk or open any package found therein that he has reason to believe contains any such control product or material and take samples thereof; and
 - (c) require any person to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books, shipping bills, bills of lading, documents containing instructions, or other documents or papers concerning any matter relevant to the administration of this Act or the regulations.
- (2) An inspector shall be furnished with a certificate of his designation as an inspector and on entering any place or premises referred to in subsection (1) shall, if so required, produce the certificate to the person in charge thereof. Certificate of appointment
- (3) The owner or person in charge of any place or premises referred to in subsection (1) and every person found therein shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this Act and the regulations and shall furnish him with such information with respect to the administration of this Act and the regulations as he may reasonably require. 1968-69, c. 50, s. 7. Assistance to inspector
8. (1) No person shall obstruct or hinder an inspector in the carrying out of his duties or functions under this Act or the regulations. Obstruction of inspector

(2) No person shall make a false or misleading statement either verbally or in writing to an inspector or other officer engaged in carrying out his duties or functions under this Act or the regulations.	False statements
(3) Except as provided by this Act no person shall remove from detention any control product seized and detained pursuant to this Act. 1968-69, c. 50, s. 8.	Breaking of detention
9. (1) Whenever an inspector believes on reasonable he may seize and detain the control product by means of or in relation to which he reasonably believes the violation was committed.	Seizure
(2) Any control product seized and detained pursuant to subsection (1) shall not be detained after <ul style="list-style-type: none"> (a) in the opinion of an inspector the provisions of this Act and the regulations have been complied with, (b) the owner agrees to dispose of such control product in a manner satisfactory to the Minister, or (c) the expiration of six months from the day of seizure, or such longer period as may be prescribed with respect to any control product, unless before that time proceedings have been instituted in respect of the violation in which event the control product may be detained until the proceedings are finally concluded.	Detention
(3) Where a person has been convicted of a violation of this Act, every control product by means of or in relation to which the offence was committed is, upon the conviction, in addition to any penalty imposed, forfeited to Her Majesty if such forfeiture is directed by the court.	Forfeiture
(4) Where an inspector has seized a control product and the owner thereof or the person in whose possession the control product was at the time of seizure consents in writing to the disposal thereof, the control product is thereupon forfeited to Her Majesty and shall be disposed of, at the expense of the person consenting to the disposal, as the Minister may direct.	Disposal with consent
(5) The Governor in Council may make regulations <ul style="list-style-type: none"> (a) respecting the detention of any control product seized under this section, the establishment of procedures for the review of any seizure and detention and the payment of any reasonable costs incidental to such seizure or detention, and for preserving or safeguarding any control product so detained; and (b) respecting the destruction or disposition of any 	Regulations

control product forfeited under this section and the payment of any reasonable costs incidental to such destruction or disposition. 1968-69, c. 50, s. 9.

APPENDIX 11

CANADIAN ENVIRONMENTAL PROTECTION ACT

76.—(1) For the purpose of ensuring compliance with this Part and the regulations, and inspector may, subject to subsection (2), at any reasonable time, Powers of inspectors

- (a) enter any place in which the inspector reasonably believes a substance intended for dumping or disposal is being loaded; or
- (b) go on board any ship, platform or other anthropogenic structure anywhere in Canada or within any area of the sea referred to in paragraphs 66(2)(a) to (f) or any aircraft if the inspector reasonably believes that the ship, aircraft, platform or anthropogenic structure has on board a substance intended for dumping;
- (c) examine any substance found in any place entered or on any ship, aircraft, platform or other anthropogenic structure boarded and open any container found therein that the inspector has reason to believe contains any substance intended for dumping or disposal and take samples of the substance;
- (d) require any person in any place entered or on any ship, aircraft, platform or other anthropogenic structure boarded to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom any books or other documents or papers containing any matter relevant to the administration of this Part;
- (e) travel on any ship, aircraft, platform or other anthropogenic structure that is loaded with a substance intended for dumping; and
- (f) detain any ship, aircraft, platform or other anthropogenic structure for a reasonable time.

(2) An inspector may not enter a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling place except Private dwelling place

- (a) with the consent of the occupant of the place, or
- (b) under the authority of a warrant issued under subsection (3).

(3) Where on an *ex parte* application a justice is satisfied by information on oath that

Authority to
issue warrant
for inspection

- (a) the conditions for entry described in subsection (1) exist in relation to a private dwelling place,
- (b) entry to the dwelling place is necessary for any purpose relating to the administration of this Act, and
- (c) entry to the dwelling place has been refused or there are reasonable grounds to believe that entry thereto will be refused,

the justice may issue a warrant authorizing the inspector named therein to conduct an inspection of the dwelling place subject to such conditions as may be specified in the warrant.

(4) In executing the warrant issued under subsection (3), the inspector named in the warrant shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

Use of force

(5) An inspector who travels on a ship, aircraft, platform or other anthropogenic structure under paragraph (1)(e) shall be carried free of charge to and from the dumping site and the person in command of the ship or aircraft or in charge of the platform or anthropogenic structure shall provide the inspector with suitable accommodation and food.

Inspector to
receive
accommodation

APPENDIX 12

TRANSPORTATION OF DANGEROUS GOODS ACT

14.(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may, subject to subsection (1.1), at any time, enter and inspect any building or place for which he is designated where he believes on reasonable and probable grounds that dangerous goods are being handled, offered for transport or transported, and request the opening and inspection of or open and inspect any container, packaging or means of transport for which he is designated whereby he believes on reasonable and probable grounds that dangerous goods are being handled, offered for transport or transported.

Powers of
inspectors

(1.1) Where any building or place referred to in subsection (1) is a dwelling-house, an inspector may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (1.2).

(1.2) Where on *ex parte* application a justice of the peace is satisfied by information on oath

- (a) that the conditions for entry described in subsection (1) exist in relation to a dwelling-house,
- (b) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and
- (c) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

he may issue a warrant under his hand authorizing the inspector named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

(1.3) In executing a warrant issued under subsection (1.2), the inspector named therein shall not use force unless he is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

(2) On inspecting any building, place, container, packaging or means of transport pursuant to subsection (1), an inspector may,

Inspection

- (a) for the purpose of analysis, take samples of anything found therein that he believes on reasonable and probable grounds to be dangerous goods; and

- (b) examine and make copies and extracts of any books, records, shipping documents or other documents or papers that he believes on reasonable and probable grounds contain any information relevant to the administration or enforcement of this Act and the regulations.

(3) Where an inspector is satisfied on reasonable and probable grounds that any dangerous goods are being handled, offered for transport or transported otherwise than in compliance with the applicable prescribed safety marks, safety requirements, safety standards and shipping documents, he shall, wherever possible, request the taking of or take any measures necessary to remedy the failure to comply; and, where the transportation of dangerous goods originating from any place or places outside Canada is involved and such remedial measures are not, in his opinion, possible or desirable, he may refuse entry into Canada of the goods and any containers, packaging or means of transport therefor or take measures to turn them back to the place or places of origin.

Safety
measures, entry
and turning
back shipments

(4) The owner or person who has the charge, management or control of any building, place, container, packaging or means of transport inspected pursuant to subsection (1) and every person requested to act under subsection (3) shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this Act.

Assistance to
inspector

(5) No person shall, while an inspector is exercising his powers or carrying out his duties and functions under this Act,

Obstruction to
inspector

- (a) fail to comply with any reasonable request of the inspector;
- (b) knowingly make any false or misleading statement either verbally or in writing to the inspector;
- (c) except with the authority of the inspector, remove, alter or interfere in any way with anything seized or removed by the inspector; or
- (d) otherwise obstruct or hinder the inspector.

NOTES

[illegible]

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete each task.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress regularly to ensure that the project is on track.

5. The final step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals and identifying any areas for improvement.

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